

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
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IN THE MATTER OF:
MILLER & SMITH LAND, INC.
Applicant

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For the Application

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Zoning Application No. G-824

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. EXECUTIVE SUMMARY

Applicant:	Miller and Smith Land, Inc.
LMA No. & Date of Filing:	G-824, filed May 5, 2004
Zoning and Use Sought:	Zone: PD-11 Use: 290 Townhome Units, including 232 “2 over 2” condominium units and 58 (<i>i.e.</i> , 20%) one-family units
Current Zone and Use:	Zone: R-200 Current Use: Undeveloped land
Location:	Clarksburg, south of Shawnee Lane, 100 feet east of its intersection with Gateway Center Drive and approximately 2000 feet west of MD 355
Applicable Master Plan:	<i>1994 Clarksburg Master Plan</i>
Acreage to be Rezoned:	Approximately 23.82 acres
Right-of-Way to be Dedicated:	Approximately .3411 acres in a 25 foot r-o-w on Shawnee Lane
Base Density in PD-11 Zone:	11 per acre x 23.82 acres = 262 Dwelling Units
Density Sought by Applicant :	290 Dwelling Units (<i>i.e.</i> , 10.7% over base density)
MPDU’s Req’d by Code §25A-5(c):	13.6% of 290 = 40 MPDU’s Required
Density Planned:	290 Dwelling Units, including 40 MPDU’s
Green Space Required/Planned:	50% required (11.91 acres) / 58.5% planned (13.94 acres)
Parking Required/Planned:	522 spaces required / 648 spaces planned
Building Height Permitted/Planned:	4-story permitted / 232 4-story and 58 3-story units planned
Transportation Issues:	Development Plan agrees to improvement of Shawnee Lane per the Master Plan and improvement of the intersection of Gateway Center Drive and Stringtown Road Extended, as needed to meet LATR requirements
Environmental Issues:	Development is entirely within the Clarksburg Special Protection Area. Preliminary Water Quality Plan Approved by Planning Board and DPS.
Consistency with Master Plan:	Project is consistent with the <i>1994 Clarksburg Master Plan</i>
Neighborhood Response:	The only neighborhood input was from the Clarksburg Civic Association Executive Committee, which sent Technical Staff an e-mail stating that it opposed PD-11 rezoning, but did not appear at the hearing.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

II. STATEMENT OF THE CASE

Application No. G-824, filed on May 5, 2004, by Applicant Miller and Smith Land, Inc., requests reclassification of a 23.8211-acre parcel of unimproved land (“Eastside”) from the R-200 Zone to the PD-11 Zone. The applicant proposes to develop the property with 290 residential units, including 232 stacked (“2 over 2”) townhome condominiums and 58 single-family attached (SFA) townhome units. Forty of the units will be Moderately Priced Dwelling Units (MPDU’s). The Eastside Property (Part of Liber 15162, Folio 596) includes Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated October 15, 2004, recommended approval (Exhibit 37).¹ The Montgomery County Planning Board (“Planning Board”) considered the application on October 21, 2004 and, by a vote of 4 to 0, also recommended approval, as stated in a memorandum dated October 22, 2004 (Exhibit 49).²

The only neighborhood input was from the Clarksburg Civic Association Executive Committee (CCAEC), which sent Technical Staff an e-mail stating that it opposed PD-11 rezoning. A copy of that e-mail is attached to the Technical Staff report, and the concerns raised by CCAEC will be addressed later in this report.

A public hearing was noticed for October 25, 2004 (Exhibit 30), and it proceeded as scheduled. There was no opposition testimony, and no member of the community participated at the hearing.

¹ The Technical Staff Report is quoted and paraphrased frequently herein.

² In that same memorandum, the Planning Board indicated that it was also “recommend[ing] approval of the Preliminary Water Quality Plan (PWQP), subject to conditions.” Since the Planning Board is the deciding authority on the PWQP, not a recommending authority, it sent a corrected memorandum on November 12, 2004 (Exhibit 55(a)), indicating that it had actually approved the PWQP.

The record was held open until November 4, 2004, to allow Applicants time to file a revised Development Plan, adding a binding element (Number 8) that would commit Applicant to making any improvement of the intersection at Gateway Center Drive and Stringtown Road Extended needed to meet LATR requirements. Applicant filed a revised Development Plan on November 4, 2004, but at the Hearing Examiner's request, elected to further revise the new binding element number 8. To do so, Applicant sent a letter asking that the record remain open until November 8, 2004. On November 5, 2004, the Hearing Examiner issued a notice reopening the record for one week (Exhibit 51), until November 12, 2004, to give Applicant an opportunity to file the revised Development Plan and for any public comments.

Applicant filed a revised Development Plan (Exhibit 53(d)) on November 8, 2004, as promised. No public comment was received, and the record closed again on November 12, 2004. Prior to the record closing on November 12, the Planning Board filed its revised memorandum (Exhibit 55(a)), indicating its approval of the PWQP, as noted in footnote 2, above.

III. FACTUAL BACKGROUND

A. Zoning History

According to Technical Staff, the subject property was placed in the R-R Zone during the 1958 Countywide Comprehensive Zoning. In October of 1973, Text Amendment 73013 rezoned the property from the R-R Zone to the R-200 Zone. The 1994 Clarksburg Sectional Map Amendment (G-710) retained the property's R-200 zoning.

B. Subject Property

The subject property is located on the south side of Shawnee Lane, approximately 100 feet east of its intersection with Gateway Center Drive and approximately 2,000 feet west of MD 355, in Clarksburg. It is generally rectangular in shape, and it is approximately 1,650 feet long and 650 feet wide, comprising 1,037,650 square feet (23.8211 acres) of land. That Gross Tract Area to be

rezoned includes the current Parcel P.600, which contains 996,188 square feet (22.8693 acres), as well as 41,462 square feet (0.9518 acres) of land previously dedicated to Shawnee Lane.

Approximately 0.3411 acres will be dedicated in the future to provide 25 feet of additional right-of-way for Shawnee Lane.

The subject property is currently undeveloped. According to Technical Staff, the southern side of the property is densely wooded and is defined by slopes and a stream valley. Two streams converge at this portion of the property and ultimately flow to a tributary of Little Seneca Creek. The property has a frontage of approximately 594 feet on Shawnee Lane and is entirely within the Clarksburg Special Protection Area. Applicant notes in its Land Planning Report (Exhibit 15) that slopes on the subject property are relatively gentle, at an average slope of five percent for the area above the stream confluence; that the confluence of the two streams creates a stream valley buffer area of approximately six acres, representing about 26% of the net tract area; and that the property is mostly clear pastureland, but includes some scattered wooded areas with most of the forested area at the confluence of the two streams. Approximately 6.6 acres, or 29% of the net tract area is forested.

The subject property is depicted on photos from Applicant's Pre-hearing Statement (Exhibit 34(a)), as shown below:



NORTHWEST PORTION OF FRONTAGE OF EASTSIDE PROPERTY FROM GATEWAY CENTER DRIVE LOOKING EAST ALONG SHAWNEE LANE TOWARDS MD ROUTE 355



INTERIOR FRONT OF EASTSIDE PROPERTY LOOKING NORTH ACROSS SHAWNEE LANE (LARGE TREES BEYOND UTILITY LINES ARE ON NORTH SIDE OF SHAWNEE LANE)

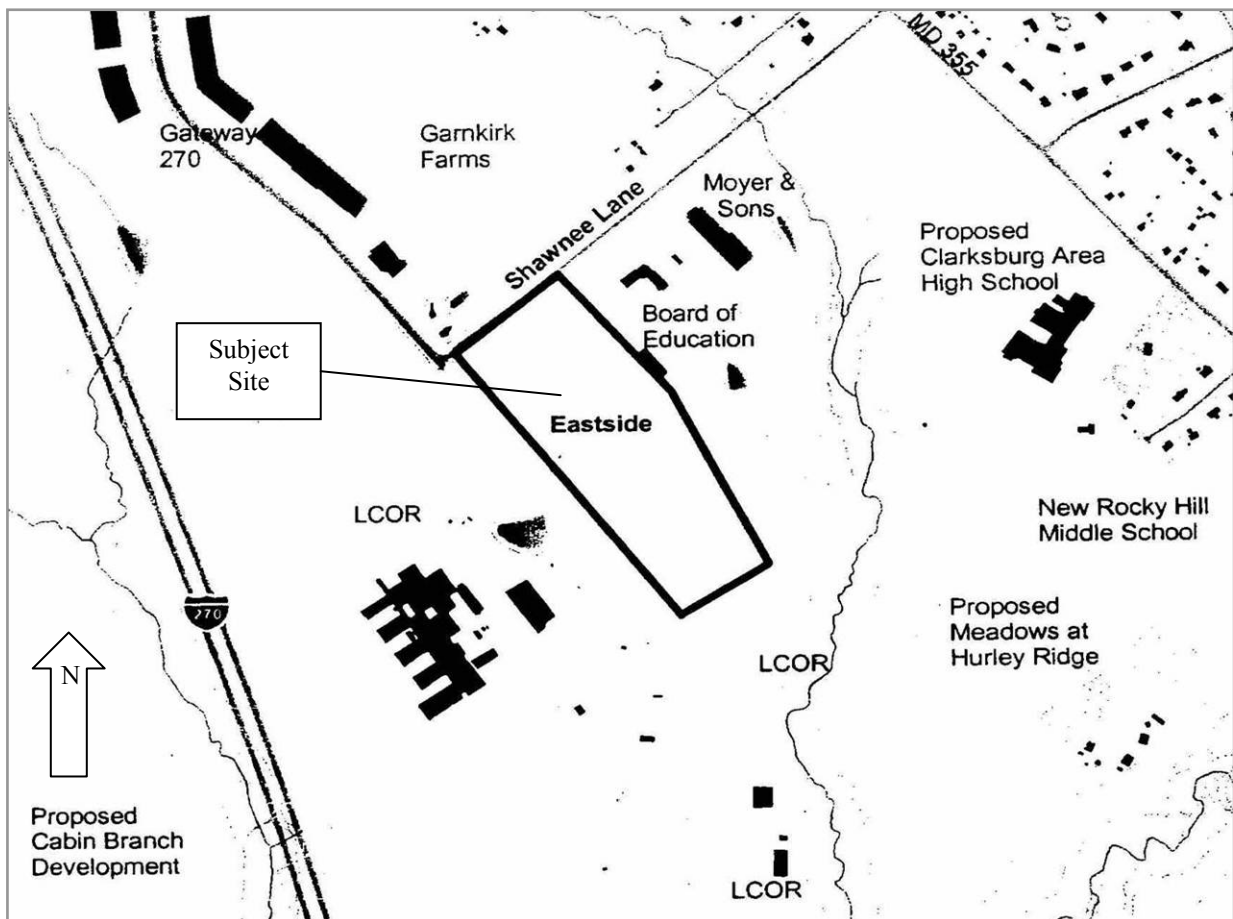


CENTER OF EASTSIDE PROPERTY LOOKING SOUTH TOWARDS STREAM VALLEY



NORTHWEST CORNER OF EASTSIDE PROPERTY LOOKING WEST TOWARDS ADJOINING COMSAT PROPERTY

The general shape and location of the of the subject site are shown in the vicinity Map attached to the Technical Staff report:



C. Surrounding Area And Adjacent Development

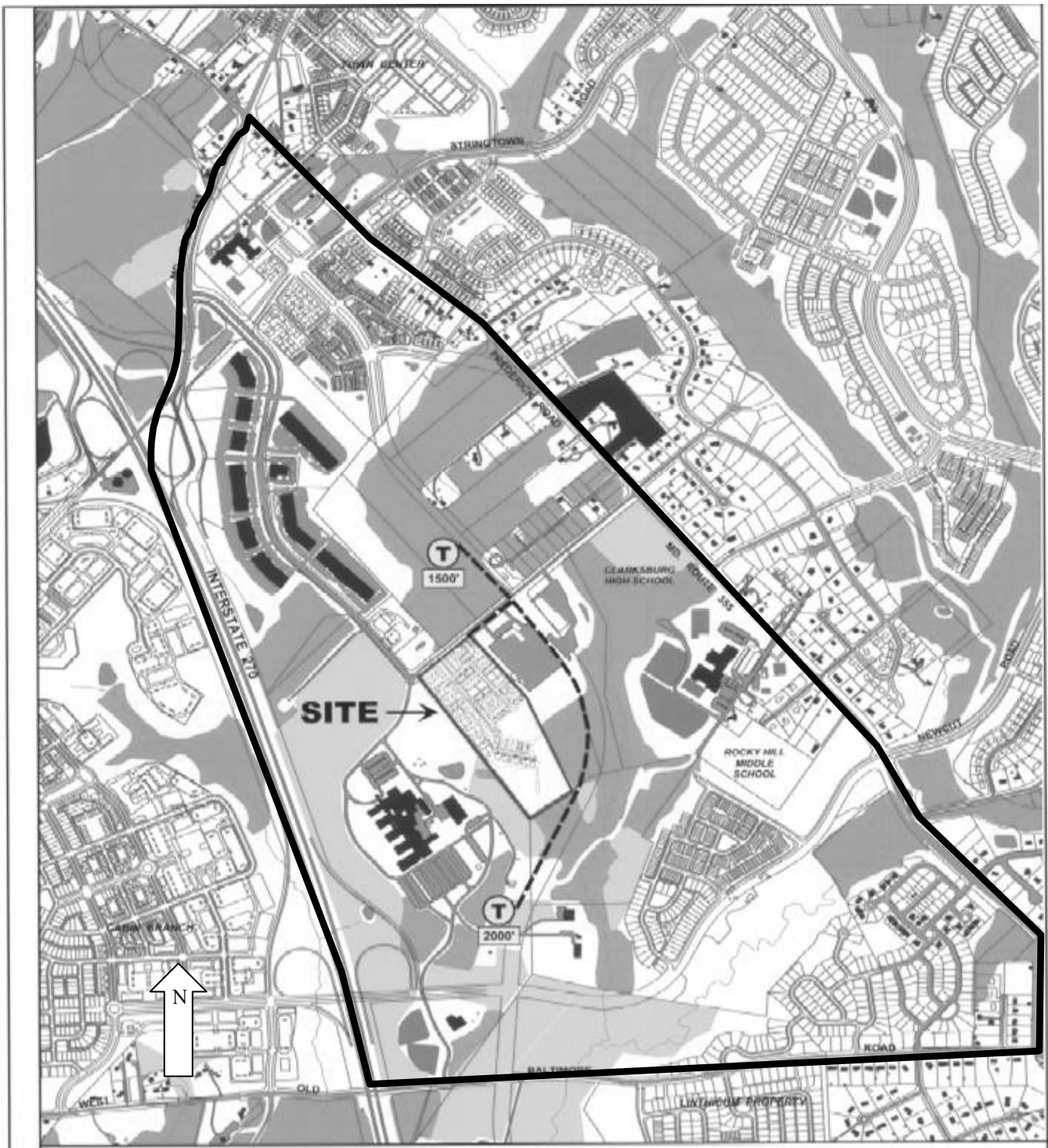
The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends designating the surrounding area as:

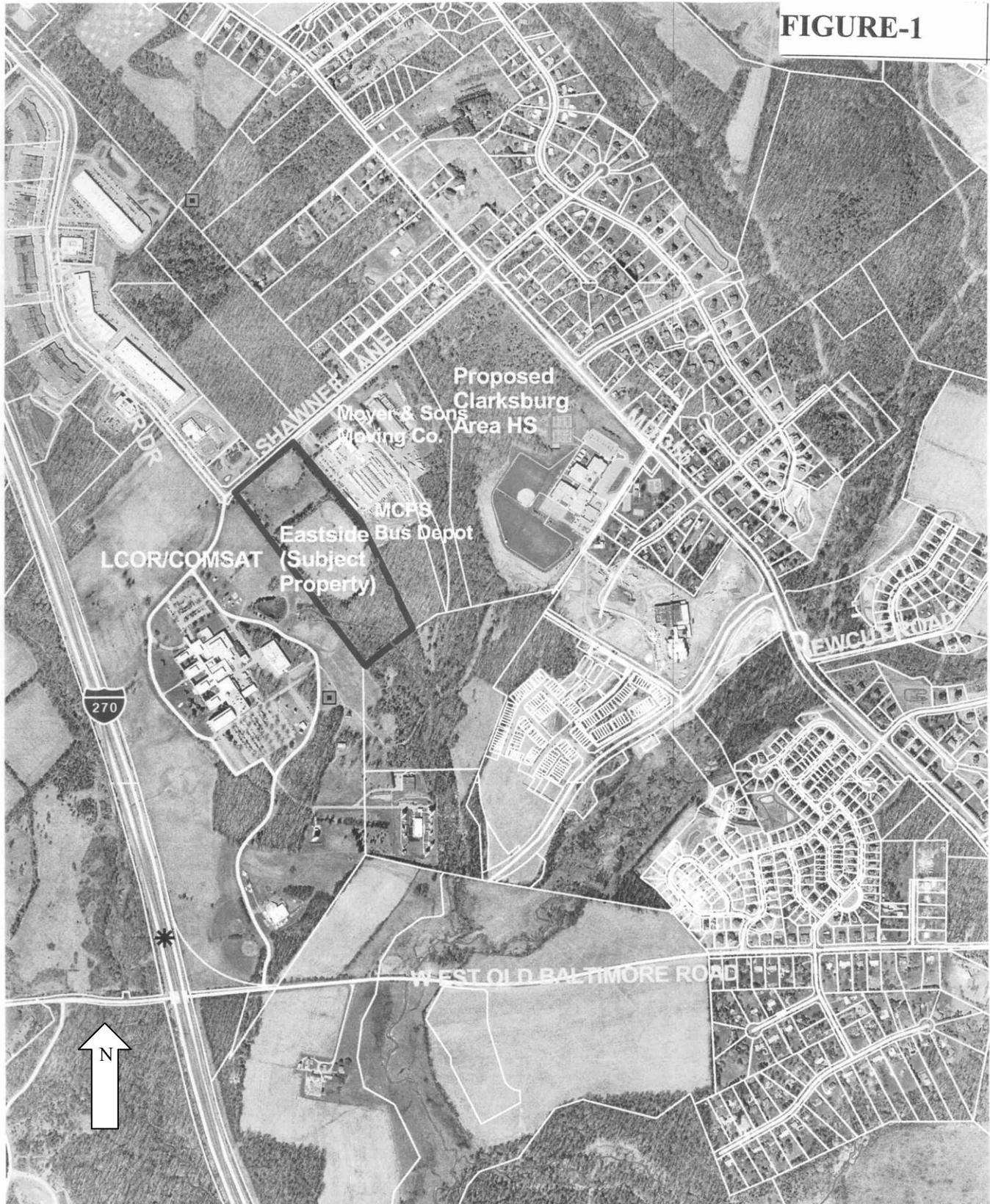
. . . bounded by Clarksburg Road to the north and northwest, I-270 to the west, West Old Baltimore Road to the south and Frederick Road (MD 355) to the east and northeast. This area lies within the 900-acre area that is identified as the Transit Corridor District Study Area in the 1994 Clarksburg Master Plan.

The Hearing Examiner accepts this designation, which can be seen on the following page, as traced by Hearing Examiner on Exhibit 42.

Technical Staff describes the surrounding area as “characterized by a large employment facility, LCOR (formerly known as COMSAT/ Lockheed Martin), undeveloped land, schools and related service facilities, and scattered residential uses. Immediately west and northwest of the subject property are the LCOR property and the Gateway 270 Corporate Office Park in the I-3 Zone. To the north across Shawnee Lane are undeveloped parcels of land in the R-200 Zone. The Board of Education Bus Depot abuts the property to the east in the R-200 Zone, and further east are a moving company in the I-3 Zone and the new Clarksburg Area High School in the R-200 Zone. To the south, the subject property abuts undeveloped, mostly wooded area in the I-3 Zone.” These features can be seen on the aerial photo attached to the Technical Staff report and reproduced below on the page following the surrounding area map. A great deal of development has been recommended for the surrounding area, which will be discussed below with regard to compatibility. *See*, footnote 7 on page 58 of this report.

Surrounding Area Map

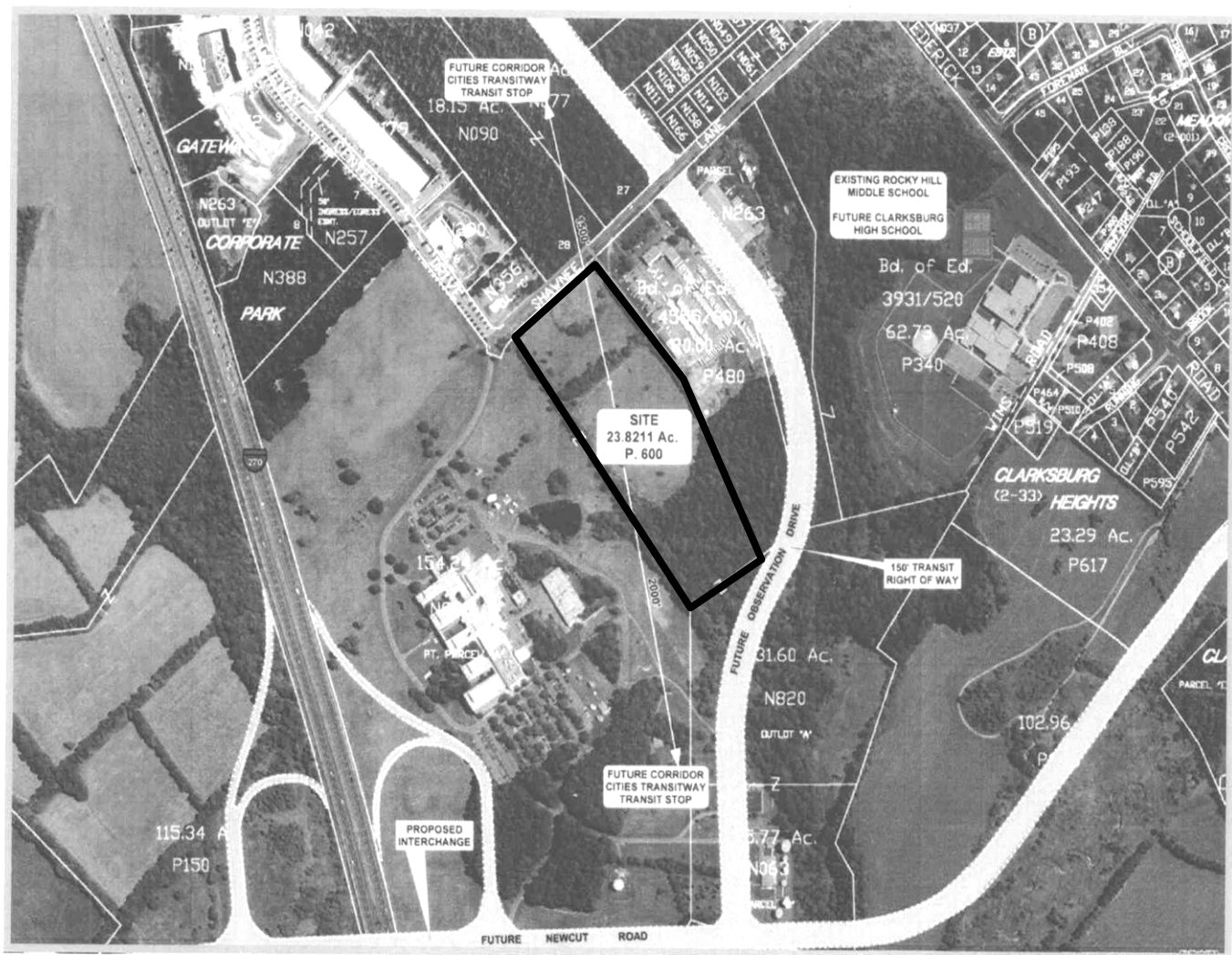


Aerial Photo of Vicinity

D. Proposed Development

1. Development Concept

Applicant proposes to construct 290 townhome units in the Clarksburg “Transit Corridor District,” consistent with the *1994 Clarksburg Master Plan’s* concept of residential development near a proposed transitway (A-19 Observation Drive). The proximity of the proposed transitway to the subject site is depicted on the aerial photo provided by Applicant as Exhibit 12.



The 290 residential units will consist of 232 stacked (“2 over 2”) townhome condominiums and 58 single-family attached (SFA) units. The SFA units will each be owned in

fee simple. Seventeen of those units will have front-loading garages, while 41 are designed with rear loading garages. Forty of the condominium units will be Moderately Priced Dwelling Units (MPDU's).

The following two drawings (Exhibits 40 and 41) demonstrate Applicant's concept of the streetscape for the proposed development:



2. Development Plan & Binding Elements

Pursuant to Code § 59-D-1.11, development under the PD-11 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-11 Zone. Under Code §59-D-1.3, this development plan must contain several elements:

- (a) A natural resources inventory;
- (b) A surrounding area map, showing the relationship to the site and use of the adjacent land;
- (c) A land use plan showing site access; locations and uses of all buildings and structures; a preliminary classification of dwelling units; locations of parking areas, including number of parking spaces; location of land to be dedicated to public use; location of land intended for common or quasi-public use but not intended to be in public ownership; and a preliminary forest conservation plan;
- (d) A development program stating the sequence of proposed development;
- (e) The relationship, if any, to the County's capital improvements program;
- (f)&(g) (Inapplicable to the PD-11 Zone);
- (h) A diagram showing general build and height of principal buildings, their relationship to each other and adjacent areas; and
- (i) Because the property lies within a special protection area, the Applicant must secure required approvals in accordance with Article V of Chapter 19, and the development plan must demonstrate how any water quality protection facilities proposed in the preliminary water quality plan can be accommodated on the property as part of the project..

The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicants except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements in this case are as follows:

1. Moderately Priced Dwelling Units

All required MPDUs will be provided on the Property.

2. Road Improvements

The Applicant or its successors or assigns (the "Applicant") will improve or fund the transportation capacity improvement of Shawnee Lane, a County Road, to an arterial

standard from Gateway Center Drive to Frederick Road (MD Route 355). Any additional right-of-way or associated easements necessary for the improvement of Shawnee Lane will be acquired or funded by the Applicant.

3. Connections to Shawnee Lane and Adjoining Properties

Consistent with Clarksburg Master Plan objectives for strong pedestrian and vehicular linkages and accessibility to Transit Stops and throughout the neighborhood, sidewalk and road connections will be provided to: (1) improved Shawnee Lane to the north; (2) LCOR's Comsat property to the west; and (3) the Board of Education's property to the east.

4. Recreational Facilities

All required recreational facilities will be provided on the Property.

5. Forest Conservation

All required forest conservation measures will be provided on the Property.

6. Stream Valley Preservation

With the exception of a possible sewer outfall, the existing wooded stream valley on the Property will be preserved in its entirety.

7. Stormwater Management

With the exception of possible upgrading of the existing stormwater management facility on the Post Office property, all stormwater management facilities will be provided on the Property.

8. Gateway Center Drive and Stringtown Road Extended

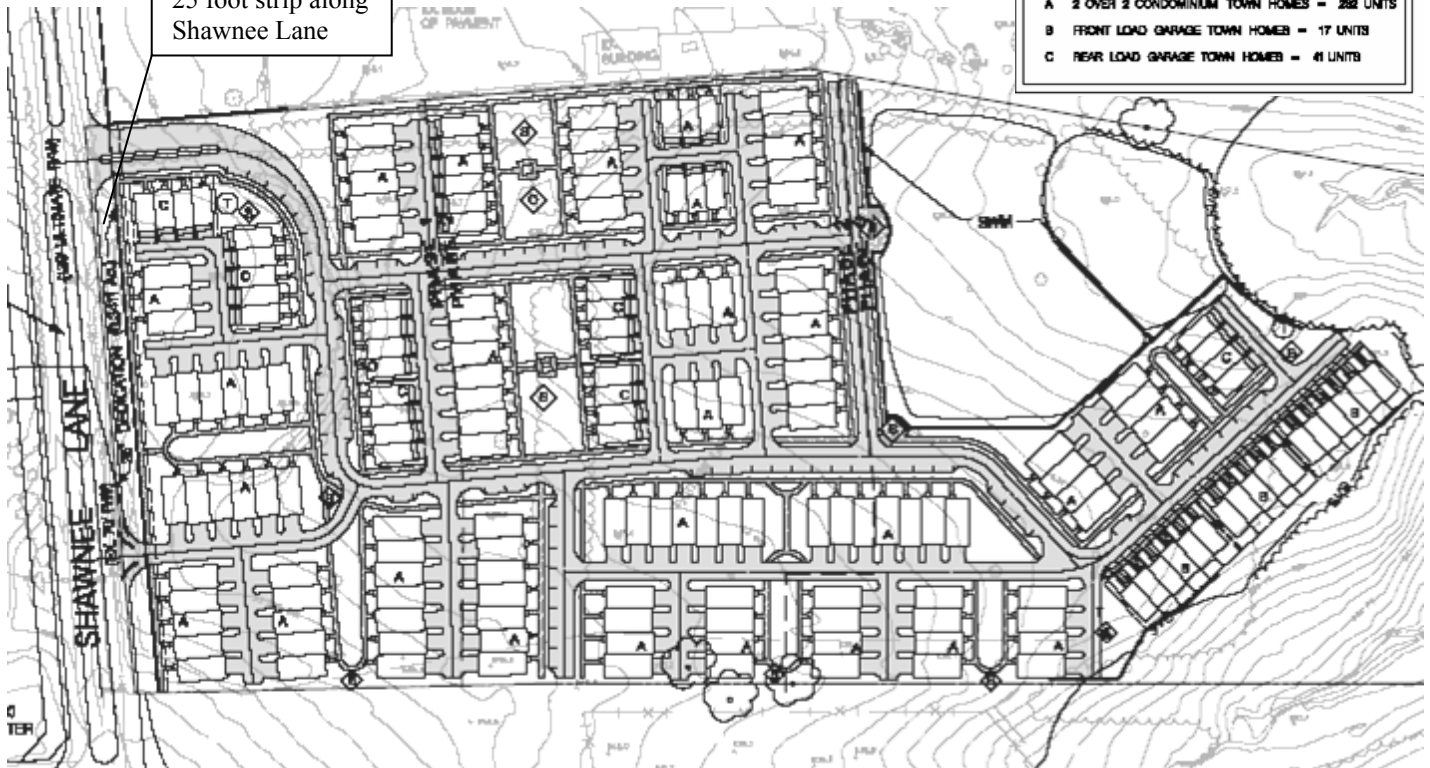
At or prior to preliminary plan of subdivision, Applicant shall meet with DPWT and the Technical Staff of M-NCPPC to determine what if any modifications to the intersection at Gateway Center Drive and Stringtown Road are required to meet LATR standards, and Applicant will undertake such changes in accordance with the schedule specified by DPWT and the Technical Staff of M-NCPPC.

The land use plan for the present zoning application, Exhibit 53(d), is titled "Development Plan" and will be referred to by that name in this report. A copy of the Development Plan is reproduced on the following pages. In order to make its details more visible, progressive enlargements of the diagram are shown, and the text from the Development Plan has been printed separately. The diagram shows the proposed locations of all structures, as well as additional information regarding the planned development.

Development Plan, Exhibit 53(d), without Text



New dedication of
0.3411 acres in a
25 foot strip along
Shawnee Lane



Set forth below are the General Notes and Site Data, followed by the Development Program and the Recreational Requirements, all of which were copied from the revised Development Plan (Exhibit 53(d)):

GENERAL NOTES AND SITE DATA:

1. Existing topography by M-NCP&PC - 5' contour intervals.
2. Boundary information by LSA - Nov. 2003.
3. There exists an approved NRI/FSD prepared by Rodgers Consulting: MNCPPC file no. 4-03337, approved 9/2/03.
4. This project lies within the Clarksburg Area Master Plan, Planning Area 13.
5. There are no designated historic sites associated with the Property.
6. Existing Water & Sewer Service Categories: W1/S3.
7. Gross Site Area: 1,037,650 sq. ft./23.8211 Ac.

P. 600 =	22.8693 Ac. / 996,188 sq. ft.
Prior Shawnee Lane Dedication =	0.9518 Ac. / 41,462 sq. ft.
Total Gross Site Area =	23.8211 Ac. / 1,037,650 sq. ft.
8. Existing Zoning: R - 200
9. Proposed Zoning (Master Plan Recommended PD 9-11): PD-11
10. Number of Dwelling Units Proposed:

232	2 over 2 condominium town homes
41	Rear-load garage townhouses
17	Front-load garage townhouses
290	D.U. Total (inclusive of 40 MPDU's and 250 market rate units)
11. Bedroom classifications:

116	of the 2 over 2 condominium town homes are 2 bedroom homes
116	of the 2 over 2 condominium town homes are 3 bedroom homes
All 58	of the fee simple town homes are 3 bedroom homes
12. Number of MPDU's required:

Base Density =	262
(23.82 ac. x 11 d.u./ac.)	
Total proposed residential units =	290
Bonus Units =	28
(290 - 262 = 28 [10.7% density over bonus density])	
Required MPDU's =	40
(290 x 13.6% [based on sliding scale in Chapter 25A])	
Number of MPDU's provided =	40
13. Minimum Number of Town Homes Required: 20% (58 d.u.)
Number of Town Homes Provided: 58 (20%)
14. Minimum Setbacks:
As established by plan approval.
15. Minimum Green Area Required: 50% or 11.91 Ac.
Green Area Provided: 607,365 sq. ft. / 13.94 Ac. (58.5%)
16. Parking Requirements:

Parking Required:	
Town homes at 2 spaces per d.u. x 58 d.u. =	116 spaces
2 over 2 condominium town homes at:	
1.50 spaces per 2 bedroom d.u. x 116 d.u. =	174 spaces
2.00 spaces per 3 bedroom d.u. x 116 d.u. =	232 spaces
Total parking required =	522 spaces
Parking Provided: 648 spaces (average 2.23 spaces per d.u.)	

DEVELOPMENT PROGRAM

Eastside will be constructed in three (3) Phases. The phasing lines are indicated on the Development Plan. Phase One commences at the western end of the Property, abutting Shawnee Lane, and will consist of seventy four (74) 2 over 2 condominium town homes and seventeen (17) rear-load, garage style, town homes. Phase Two, in the middle portion of the Property, will consist of one hundred four (104) 2 over 2 condominium town homes and twenty (20) rear-load, garage style, town homes. Phase Three, toward the eastern end of the Property, abutting the Stream Valley Buffer, will consist of fifty four (54) 2 over 2 condominium town home, seventeen (17) front load, garage style, town homes and four (4) rear-load, garage style, town homes.

Each of the individual Phases, once complete, will incorporate the vehicular and pedestrian circulation systems, all required utilities, the recreational amenities and the open spaces associated with those individual Phases as indicated on the Development Plan.

EASTSIDE Recreational Requirements

Demand Calculations	D1 Tots	D2 Children	D3 Teens	D4 Adults	D5 Seniors
Townhouse 58 d.u. / 100 = 0.58	$17 \times 0.58 = 10$	$22 \times 0.58 = 13$	$18 \times 0.58 = 11$	$129 \times 0.58 = 75$	$7 \times 0.58 = 5$
Garden Unit (2 over 2 condominium town homes) 232 d.u. / 100 = 2.32	$11 \times 2.32 = 26$	$14 \times 2.32 = 33$	$12 \times 2.32 = 28$	$118 \times 2.32 = 274$	$16 \times 2.32 = 38$
Total Required Demand	36	46	39	349	43
Recreation Type	Tots	Children	Teens	Adults	Seniors
Pedestrian System	$0.10 \times 37 = 3.7$	$0.20 \times 47 = 9.4$	$0.20 \times 39 = 7.8$	$0.45 \times 350 = 157.5$	$0.45 \times 42 = 18.9$
Nature Trails	$0.05 \times 37 = 1.8$	$0.10 \times 47 = 4.7$	$0.15 \times 39 = 5.8$	$0.15 \times 350 = 52.5$	$0.15 \times 42 = 6.3$
Natural Areas	0	$0.05 \times 47 = 2.3$	$0.10 \times 39 = 3.9$	$0.10 \times 350 = 35.0$	$0.05 \times 42 = 2.1$
Picnic / Sitting Area - 11 ea.	$11 \times 1 = 11$	$11 \times 1 = 11$	$11 \times 1.5 = 16.5$	$11 \times 5 = 55$	$11 \times 2 = 22$
Tot Lot - 3 ea.	$3 \times 9 = 27$	$3 \times 2 = 6$	0	$3 \times 4 = 12$	$3 \times 1 = 3$
Open Play Area I - 1 each	6	9	12	30	2
Total Provided	49.50	42.40*	46.00	342.00*	54.30
* A 10% variance is allowed					

As shown in the Applicant's "General Notes and Site Data," the number of MPDU's required is calculated in the following manner: Since the PD-11 Zone permits a density of 11 units per acre, Applicant's 23.82 acres would yield a permitted base density of 262 Dwelling Units (11 per acre x 23.82 acres = 262.02). To obtain a density bonus of an extra 28 units (*i.e.*, 10.7% above the 262 unit base density)³, bringing its total density to 290 units, Applicant is required by Montgomery County Code §25A-5(c)(3), to have 13.6% of its units as MPDU's. Applying that factor of 13.6% to the planned 290 units yields a figure of 40 required MPDU's.

Applicant has also committed to dedicating to the public right-of-way, a 25 foot strip of land along Shawnee Lane. This new dedication of 0.3411 acres is in addition to the prior Shawnee Lane dedication which Applicant references in the "General Notes and Site Data" on the Development Plan.

Although Applicant has listed the number and type of recreational facilities in detail on the Development Plan, this type of breakdown detail is actually reviewed at site plan and subdivision, not during rezoning, and it was therefore not an issue at the hearing. There was testimony at the hearing describing the proposed recreational facilities, and Technical Staff noted in its report that the recreational space provided is consistent with the Master Plan, as will be discussed below.

3. Conformance with the Master Plan

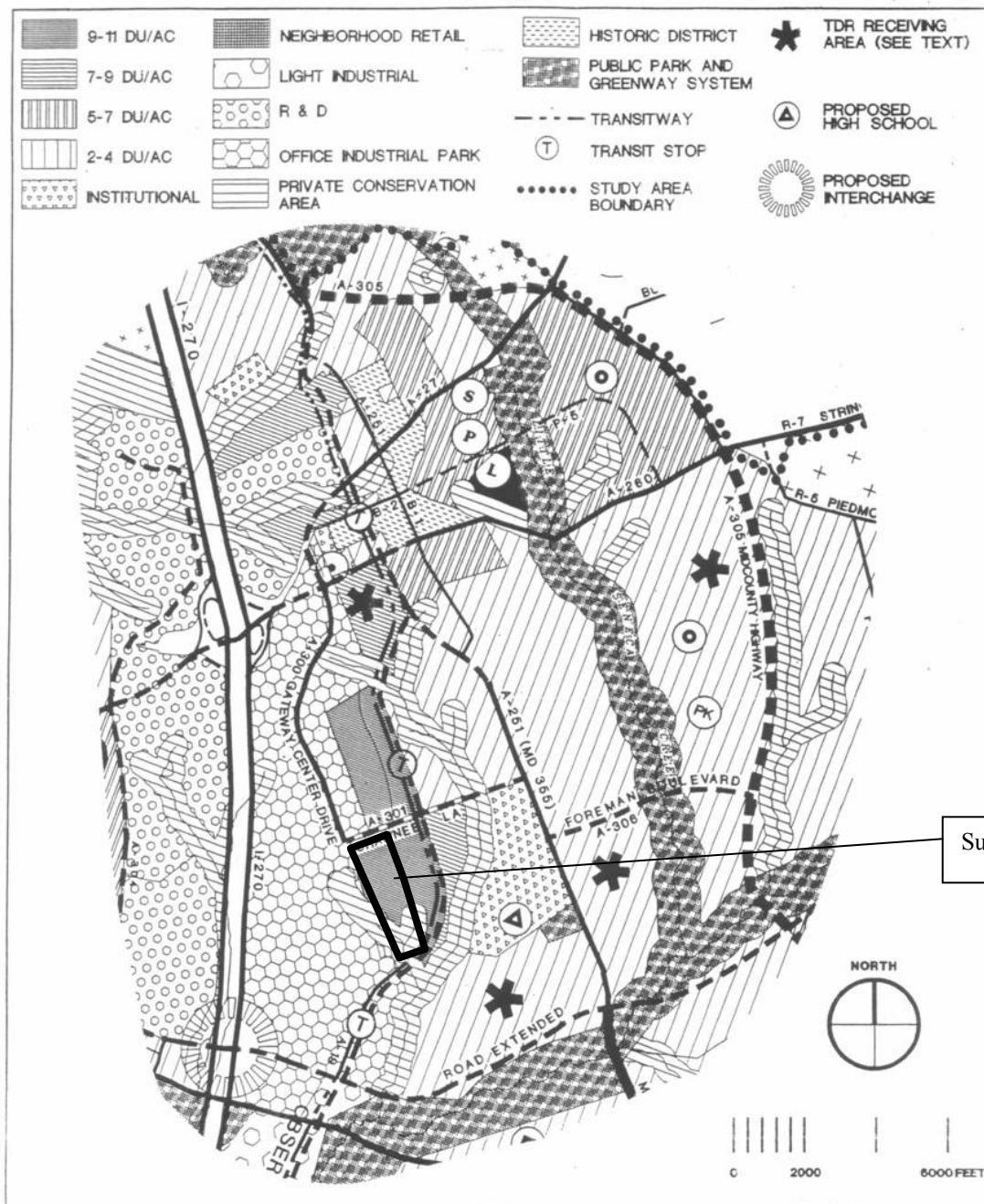
The subject site is located within the area governed by the *Clarksburg Master Plan*, approved and adopted in June, 1994. The Master Plan's recommendations for the subject site center around the Plan's proposal for "a comprehensive transit system that will reduce dependence on the automobile." Master Plan, page 22. A significant part of this proposal is a north-south Transitway that "will serve the transportation needs of the residents and workers in

³ Applicant could have sought up to a 22% bonus density, but because of a number of factors (stream valley buffer, storm water management, the style of unit, the connectivity, recreation and the available land that can be developed), Applicant has not sought the maximum density bonus of 22%, but rather proposes a 10.7% density bonus. Tr. 72-77.

the I-270 Corridor north of Shady Grove.” The Master Plan assumes the continued buildup of Gateway 270 and LCOR’s Comsat site into major employment centers alongside I-270, with high-density residential areas nearby. Master Plan, page 56.

The area from Newcut Road Extended, north to MD 121, is called the “Transit Corridor District,” which is depicted in the Land Use Plan (Figure 22) on page 55 of the Master Plan.

Transit Corridor District Land Use Plan



As can be seen on the Land Use Plan, a density of 9 to 11 dwelling units per acre is recommended for the subject site. The Master Plan expressly recommends the Planned Development (PD) Zone in this area “to encourage assemblage and to promote a mix of uses near the transit stop itself.” Master Plan, pages 56 and 104.

The proposed Transitway will be run just to the east of the subject site, and will have two Transit Stops located between Newcut Road Extended and MD 121 (Clarksburg Road). See the Map on page 11 of this report. The center of the subject site is approximately 1,500 feet from the proposed Shawnee Lane Transit Stop to the north and approximately 2,000 feet from the Newcut Road-Extended Transit Stop located to the south.

Near the Newcut Transit Stop, the Master Plan recommends that development should be employment-oriented to serve Comsat. Master Plan, page 54. The Plan also notes that the recommended mix of residential uses at this location will only occur “if vacant land on the Comsat site is developed for residential uses.” The Eastside development provides for residential development of a portion of Comsat property, thus satisfying the Plan’s objective.

The proposed Development Plan will introduce a number of residential units into an existing employment area within walking distance of two proposed Transit Stops, which is a major goal for the development of this area as envisioned by the Master Plan. Although the Development Plan provides some variety of housing types, *i.e.*, single-family townhomes and stacked condominium units, it is not precisely the mix recommended by the Master Plan for the Transit Corridor District as a whole. Technical Staff recommends that the mix suggested on page 39 of the Master Plan for the Transit Corridor, which is 30-50% multi-family, 40-60% attached and 5-10% detached, can be achieved by development of adjacent properties. This is a sensible approach because the Master Plan does not require that each development have the precise percentage of each type of unit recommended, nor would that be practical, given different

circumstances and site conditions on each property. As stated on page 10 of the Technical Appendix to the Master Plan, “The actual mix [of housing types] cannot be predicted with certainty since the unique characteristics of a site strongly influence housing mix.”

Applicant’s Development Plan also fulfills the Master Plan objective of improving east-west roadway connections through Binding Elements 2 and 8, which respectively call for Applicant to widen Shawnee Lane to arterial standards and to make any modifications necessary at the intersection of Stringtown Road and Gateway Center Drive to meet LATR requirements.

The Master Plan also calls for “recreational opportunities for residents . . . within individual neighborhoods.” Master Plan at page 162. Technical Staff observes that,

[t]he proposed plan achieves [the] type of open space [called for in the Master Plan] by providing a significant, centrally located commons, which is sufficiently wide enough to accommodate recreation facilities, such as tot lots and picnic areas. In addition, the proposed plan provides several vistas of the proposed open space within the stream valley and fronts development around the storm water management pond. This area should be treated as a recreational amenity with pathways, seating and appropriate landscaping. Pedestrian access to the stream valleys also should be achieved to provide nature oriented recreation and walking.

Finally, the Master Plan “[e]ndorses an extensive network of interconnected streets to provide local access within neighborhoods.” Master Plan at page 24. As noted by Technical Staff, the Development Plan provides such an interconnected street system through its multiple connections to adjacent properties and its planned pedestrian sidewalk network.

4. Public Facilities (Traffic Impact, School Capacity and Water & Sewer Service)

The County’s Annual Growth Policy (AGP) and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. Applicant provided testimony and exhibits with regard to transportation, schools and water and sewer service.

a. Traffic ImpactLocal Area Transportation Review (LATR):

Technical Staff identified four intersections near the subject site as critical in determining whether Applicant will meet the applicable congestion standard for the Clarksburg Policy Area. Both Technical Staff and Applicant's traffic engineer applied the congestion standard in effect on the date of the application, which was May 5, 2004 (*i.e.*, 1,500 Critical Lane Volume (CLV) in the Clarksburg area). The congestion standard in effect since July 1, 2004 for the Clarksburg area is 1,450 CLV. This distinction does not make a difference in this case because all intersections will meet both standards following roadway modifications to which Applicant has committed in Binding Element 8. The following table shows the CLV calculations:

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour								
	Existing		Background		Total*		Total**	
	AM	PM	AM	PM	AM	PM	AM	PM
MD 121/Gateway Center Drive	738	940	1,222	1,802	1,307	1,841	1,197	1,231
MD 355/Stringtown Road	1,255	1,032	1,313	1,374	1,313	1,374	1,313	1,374
MD 355/Shawnee Lane	1,216	1,048	1,285	1,200	1,330	1,255	1,206	1,159
Gateway Center Drive/Shawnee Lane	88	130	132	311	137	390	137	390

* Total development conditions without proposed roadway improvements.

** Total development conditions with proposed roadway improvements.

In the above table, trips expected to be generated by the proposed development were added to the existing and the background traffic (*i.e.*, trips generated from approved but unbuilt developments) to determine the total future traffic. The total future traffic was assigned to the critical intersections to determine the total future CLVs.

As shown in this table, all existing intersections analyzed are currently operating at

acceptable CLVs. Under the background development condition (*i.e.*, including pipeline development, but not the subject development), the intersection of Clarksburg Road (MD 121) and Gateway Center Drive⁴ has a CLV of 1,802 in the PM peak hour, thus exceeding acceptable congestion standards. Under the total development condition (*i.e.*, the single asterisked total, which includes pipeline development plus the subject development, but does not account for road improvements), the congestion at this intersection further deteriorates to a CLV of 1,841. The Applicant has agreed to provide intersection improvements to mitigate the site-generated trips. Upon implementation of those roadway improvements (*i.e.*, the double asterisked total), the Gateway Center Drive/Stringtown Road Extended (MD 121) intersection will operate with a CLV of 1,231 during the PM peak hour, well within both the pre and post July 1, 2004 congestion standards.

Policy Area Transportation Review (PATR):⁵

Applying the FY 2004 Annual Growth Policy staging ceiling capacity, Technical Staff determined that there was insufficient capacity available for the housing development proposed by Applicant. As of May 31, 2004, there was a negative staging capacity of -5,028 housing units in the Clarksburg Policy Area. The Applicant proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) in order to provide sufficient capacity, and Technical Staff determined that the proposed roadway improvements would provide sufficient staging ceiling capacity to accommodate the proposed development. Applicant's commitment to this improvement is contained in Binding Element 2.

Thus, both the LATR and the PATR standards have been satisfied.

⁴ This intersection is also called "Gateway Center Drive/Stringtown Road Extended."

⁵ As mentioned above, this Application was filed prior to July 1, 2004, and therefore Technical Staff applied the standards of the FY 2004 AGP, including the PATR which was then in effect. When the Hearing Examiner raised the question of whether the PATR should be applied at all, given its elimination in the current FY 2003-05 Policy Element of the new AGP, Applicant's counsel opined that it should be applied. Tr. 48-49. Given Applicant's commitment to a binding element to widen Shawnee Lane to satisfy the PATR, this issue is now a moot point.

b. School Capacity

School capacity is a significant concern in this case because of the size of the proposed development. The subject property is located within the Clarksburg/Damascus Cluster. In a letter dated September 15, 2004, Joseph J. Lavorgna, Director of Planning and Capital Programming for Montgomery County Public Schools (MCPS), reported that the proposed development of 290 dwelling units is estimated to generate 81 elementary, 27 middle and 31 high school students (Exhibit 34(q)).

The subject site is served by Clarksburg Elementary School, Rocky Hill Middle School and Damascus High School. Clarksburg Elementary School is projected to remain over capacity for the six year forecast period. Two new elementary schools are scheduled to open, one for the 2006-07 school year (Clarksburg/Damascus Elementary School #7) and the other for the 2009-10 school year (Clarksburg/Damascus Elementary School #8). The opening of these schools is intended to address projected space shortages at Clarksburg Elementary School. Mr. Lavorgna notes that it is likely that additional new elementary schools will be needed to keep pace with development in the area.

Rocky Hill Middle School is projected to exceed capacity beginning in the 2008-2009 school year. The 1994 Master Plan identifies a site for a future middle school located in the Greenway Village Subdivision; however, the school is not yet scheduled for construction. At the high school level, Damascus High School is projected to remain over capacity for the six year forecast period. A new high school, the Clarksburg Area High School, is scheduled to open for the 2006-07 school year. The new school is expected to relieve projected space shortages at Damascus High School.

Mr. Lavorgna concludes his letter by noting that the current Annual Growth Policy (AGP) schools test finds the school capacity adequate in the Clarksburg Cluster. See also, the Planning

Board's letter to the Council finding capacity "adequate" in each cluster for FY 2005 (Exhibit 34(r)).

Applicant's vice-president, Charles Ellison, testified that, given the school construction schedule and the staging of the subject development, it appeared that there will be new school facilities on line at the same time Applicant is providing homes. Tr. 138. At the Hearing Examiner's request (Tr. 6), Applicant produced a chart (Exhibit 52(c)) showing how the timing for construction of new schools will match up with the schedule of construction and occupation of the Eastside project. It is shown below:

G-824		EASTSIDE - School Construction vs. Home Construction			
	Sept. 04	Sept. 05	Sept. 06	Sept. 07	Sept. 08
Eastside Home Construction			54 Total Homes Occupied	206 Total Homes Occupied	290 Total Homes Occupied
Clarksburg H.S.	Under Construction		Opens 9/2006		
Rocky Hill M.S.	Opened				
Baker M.S.	6 Classroom Addition	Opens 9/2005			
Clarksburg E.S. #7		Under Construction	Opens 9/2006		
Clarksburg E.S. #8				Under Construction	Opens 9/2008

Based on the testimony, the timing shown in this chart, and the fact that the current Annual Growth Policy (AGP) schools test finds the school capacity adequate in the Clarksburg Cluster, the Hearing Examiner concludes that MCPS will be able to handle the increased demand projected from the subject development.

c. Water and Sewer Service

Technical Staff reports that public water and sewer serve the general Shawnee Road area. Water category is W-1, and the project site is eligible for sewer service. It is located in Sewer Service Area 'A' originally identified for service in Stages 2 and 3 of the Staging Plan. Funding for sewer service was provided in the FY 96 Capital Improvements Program, according to Technical Staff.

Although the Technical Staff report noted that “[i]nterceptor capacity for the proposed project is found to be deficient,” Applicant has submitted evidence that this problem is being resolved. By the end of November 2004, WSSC will have completed the Crystal Rock Wastewater Pumping Station and associated Force Main, according to Beth Forbes, a WSSC Development Project Manager (Exhibit 44). Once the Wastewater Pumping Station is placed into service, there will no longer be an interceptor capacity deficiency. Tr. 102-103.

5. Environmental Issues

The subject site is located within the Little Seneca Creek Watershed of the Clarksburg Special Protection Area. Therefore, its Preliminary Water Quality Plan (PWQP) had to be approved by both the Department of Permitting Services (DPS) and the Planning Board prior to rezoning. DPS’s conditional approval is attached to Technical Staff’s report (Exhibit 37) and the Planning Board’s conditional approval is contained in its revised memorandum of November 12, 2004 (Exhibit 55(a)). The conditions imposed by the Planning Board are as follows:

- (1) Compliance with the conditions in Montgomery County Department of Permitting Services’ (MCDPS) October 5, 2004 letter of approval for SPA [Special Protection Area] stormwater management, and sediment and erosion control. Further resolution of other technical issues such as dam breach shall be resolved prior to submission of site plan.
- (2) No encroachments within stream valley buffers, including any grading, clearing, SWM [stormwater management] and sediment control facilities, or impervious surfaces, except as determined by staff as unavoidable and necessary. The applicant must use all available planning options, including the use of retaining walls, reconfiguration of site layout, and loss of developable area outside of stream buffers, to achieve this objective. Additionally, stormwater pond embankments must not be less than 15 feet from the buffer per MD 378 regulations, which forbid trees and woody plants within 15 feet of the toe of slope of the dam.
- (3) The applicant shall eliminate or minimize forest and stream impacts in the southern portion of the property. In that regard, the applicant must revise the layout or demonstrate that the proposed sewer alignment shown on the Preliminary Water Quality Plan minimizes the impacts to priority forest and the stream buffers, and that these impacts are technically unavoidable

The Final Water Quality Plan will be submitted prior to Site Plan review.

In addition to the items discussed previously in this Report, Applicant has submitted an approved Natural Resources Inventory and Forest Stand Delineation (Exhibit 34(h)), a revised Concept Grading Plan (Exhibit 36(b)), a revised Concept Water and Sanitary Sewer Plan (Exhibit 36(d)), and a revised Concept Forest Conservation Plan (CFCP-Exhibit 36(e)).

Forest Conservation

Technical Staff indicates that the minimum retention requirements for forest conservation must be met onsite, in accordance with Forest Conservation Law. Applicant's Concept Forest Conservation Plan shows retention of 5.68 acres of the site's 6.62 acres of forest. Technical Staff reports that the conservation threshold (*i.e.*, the minimum retention threshold) will be met onsite as required, and the "break even" point has been achieved, meaning that no reforestation or afforestation will be required. According to Technical Staff, Applicant's CFCP "shows the site fully meeting the requirements of the Forest Conservation Law," and staff therefore recommended approval of the CFCP.

Water Quality

Technical Staff reports that the Countywide Stream Protection Strategy (CSPS, 1998) "rates subwatershed stream and habitat conditions, as ranging from 'good' to 'excellent'." As noted by Technical Staff, "future development of the site must implement the special protection requirements of the Environmental Guidelines, Forest Conservation Law, and Chapter 19.60, the County Special Protection Area legislation (including stormwater management and sediment control facilities) to maximize protection of stream quality."

Stormwater Management

Technical Staff evaluated stormwater management as follows:

Most of the site will drain to a single stormwater management facility that will be designed to provide the required 1-year control, with safe conveyance of larger storms to the 100-year storm event. This facility will also accommodate storm flow via the storm drain system, from the property across Shawnee Lane to the north. In keeping with SPA policy, the surface water quality features for the Eastside property will consist of adequately sized redundant sand filters, the storm drain will be appropriately configured, and infiltration facilities will be provided.

Site Imperviousness

Although there are no imperviousness ceiling limitations within the Clarksburg SPA east of I-270, Technical Staff notes that the SPA law requires that all opportunities to reduce impervious surfaces be evaluated on the Eastside property. In that regard, Technical Staff advised the Applicant to consider every opportunity, including stacking housing units, so as to increase the amount of open space provided.

Technical Staff reported no environmental issues warranting denial of this application.

E. Neighborhood Concerns

No neighbors appeared at the hearing to testify regarding the subject application; however, there was some input from the Clarksburg Civic Association Executive Committee (CCAEC), which sent Technical Staff an e-mail stating that it opposed PD-11 rezoning. A copy of that e-mail is attached to the Technical Staff report. The concerns expressed by members of the CCAEC are summarized below:

- a. They want the proposed Transitway built before high density construction.
- b. They feel there is not enough green space provided in the development.
- c. They believe the nearby bus depot is a health hazard.
- d. They have concerns about the effect of development on the quality of their well water.
- e. They fear density of the development will be too great if the bus depot site and Comsat site are developed.
- f. They question the calculation of maximum number of units and MPDU's.
- g. They would prefer if the Zoning Ordinance provided for PD-10 Zoning (not just PD- 9 or PD-11).
- h. They believe that the PD-9 Zone should require 50% green space.

- i. They feel that the Zoning Ordinance should define minimum usable green space, as well as total green space.

a. Transitway

Although one can appreciate the neighbors' desire for the Transitway to be built prior to new development, there is nothing in the Master Plan suggesting that order of development. The Hearing Examiner must follow the dictates of the Zoning Ordinance and the Master Plan, and the proposed development appears to be consistent with both. Moreover, the Hearing Examiner accepts the un rebutted testimony of Applicant's land planning expert, Phil Perrine, to the effect that the Transitway planned for in the Master Plan cannot be successfully implemented until there is "higher density residential and a mix of residential and employment in this area. Without that residential base the transit way would not have sufficient ridership to be warranted or if it were implemented without the base would not succeed." Tr. 104

b. Green Space

Zoning Code §59-C-7.16 requires a minimum of 50% green area for a development in the PD-11 Zone. Applicant will be providing 58.5% green space, thus exceeding the statutory minimum. See General Note 15 on the Development Plan.

c. The Bus Depot

There is no evidence in this record that the nearby bus depot will be a health hazard to residents of the subject development. Tr. 109-110. There is evidence from an expert acoustical engineer that it will not pose a health hazard in terms of noise (Tr. 132-137), and word-of-mouth testimony indicating that fumes have not been a problem on the side of the bus depot where the subject site is located. Tr. 14-15. There is also evidence in the record that the bus depot property

is in the process of being relocated. Tr. 13-14, 55-56. Thus, the Hearing Examiner has no basis for finding that the bus depot would pose any health danger to anyone.

d. Well Water

There is no evidence in the record indicating that the proposed development would pose a danger to the quality of any neighbor's well water. Tr. 83-84. As demonstrated above, there are strict procedures for the review of development plans to insure the quality of water is maintained. Those procedures have been followed in this case, and both DPS and the Planning Board have approved Applicant's PWQP.

e. Density of Future Development

The Hearing Examiner is not unmindful of concerns about the density of development, but there has been no evidence presented that the density of development will exceed that which is intended in the Master Plan. In fact, the contrary is true. Mr. Perrine testified that the Master Plan contemplates redevelopment of the surrounding properties. Tr. 110-113. It provides a summary of the "maximum end-state development potential" in the 990 acres of the Transit Corridor District, which calls for 2,790 dwelling units. Master Plan at page 40. There is no evidence that this number has been approached.

f. Calculation of Units and MPDU's

The Hearing Examiner has reviewed the calculations of MPDU's and found them to be consistent with the Code provisions which control the maximum number of units permitted and the number of required MPDU's, as discussed earlier in this report. The calculations are also supported by the expert testimony. Tr. 72-77.

g., h. & i. Suggestions for the Zoning Ordinance

The final three items mentioned by CCAEC would require a text amendment to the Zoning Ordinance, and they are therefore beyond the scope of this review.

In sum, CCAEC's e-mail to Technical Staff raised no issues which warrant denial of this application, based on the record in this case. The Hearing Examiner is not free to ignore the probative evidence, such as that provided by Applicant's experts and Technical Staff, in favor of contentions that amount to little more than generalized concerns of the neighbors. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93, 262 A.2d 499, 504-505 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265, 636 A.2d 499 (Ct. Spec. App. 1994).

IV. SUMMARY OF THE HEARING

Applicants called four witnesses at the hearing, Charles Ellison, vice-president of Applicant, Miller and Smith Land, Inc., Phil Perrine, an expert in land planning, Craig Hedberg, an expert in traffic engineering and Gary Ehrlich, an acoustical engineer. No members of the community testified for or against the project; nor did the People's Counsel participate.

1. Charles Ellison:

Charles Ellison testified that he is the vice-president of Applicant, Miller and Smith Land, Inc., and although testifying as a fact witness, he is a civil engineer and land planner by training. Mr. Ellison personally met with members of the Clarksburg Civic Association (CCA) on a number of occasions and has tried to address their concerns and comments in his plans.

Mr. Ellison identified the location of the subject site, and testified that MCPS was in the process of issuing a request for proposals to relocate the bus depot which is immediately to the east of the subject site. Mr. Ellison has been informed by school personnel that the current bus

depot is too small to meet their needs and that they have heard “complaints and rumors,” but “they were not aware of any identified health hazards associated with the bus depot itself.” Tr. 14.

Mr. Ellison further testified that occasionally people to the east of the bus depot (i.e. the side away from the subject site) experience the odor of diesel engine exhaust, but he concluded that it was because of the low terrain in that area.

According to Mr. Ellison, the subject property is owned by LCOR at Clarksburg, LLC, and is under contract to Applicant, Miller and Smith, which is one of the largest privately owned builders in the Washington metropolitan area. Mr. Ellison stated that his company has won numerous awards for community and home design. Exhibit 34-U show homes Applicant is constructing in the County. Mr. Ellison feels that the proposed development will set a high standard for development in the area and “will work well with future conditions anticipated by the Master Plan.” Tr. 17-18.

Mr. Ellison testified that the planned development had to be moderately dense because of its close proximity to two of the designated transit stops in the Master Plan. He observed that the higher the density of housing closer to transit stops, the higher the use of transit, and that is one goal of all master plans today.

The design of the development is “a neo-traditional or a traditional neighborhood, TND design.” Tr. 19. Mr. Ellison testified that this type of community is a goal of the Clarksburg Master Plan and that the staff at Park and Planning agree. This design is along the lines of a Kentlands or a Lakelands or a Clarksburg Town Center.

Applicant strives for “unit connectivity of pedestrian and vehicles, access ways between properties, and within the property.” Alley ways and garages are used to keep parked cars off the major streets. Community open space is integrated with the plan and is usually spread throughout the residences instead of just having the one large parkland. Part of the concern that was

expressed by the Clarksburg Civic Association is that the planned development doesn't have a large park, but, according to Mr. Ellison, it has a variety of open spaces throughout the community.

Storm water management basins, in addition to their normal function, are utilized as part of the amenity package for the planned community, by creating four small cells separated by berms which will have walking paths and some type of nature exhibits, such as flowering shrubs or something that's attractive to particular types of birds.

According to Mr. Ellison, Technical Staff encouraged him to have a road fronting on the storm water management basin, as a promenade along this natural way, thus creating a walking environment and making the storm water management basins "an active part of the recreational and green space for the public." In addition, there is a large court area that's planned roughly in the center of the community. Mr. Ellison likened this center court area to the City of Savannah where they have "very interesting courtyards throughout the city." He envisions streets connecting various courtyards to the central courtyard in the development, thus forming "a large green corridor that will be very attractive." In addition, there will be small interior courtyards which will be a little bit more private in nature. Mr. Ellison notes that the project not only meets the 50 % green space requirement by having 58 % green space, but also the green space locations are "carefully thought out throughout the community so it is accessible by virtually all of the future residents." Tr. 24.

Mr. Ellison testified that the development plan works very well with the natural features and topography on the site, a gentle 5% slope, and thus there will be no need for massive grading. Two types of housing are planned, three story, fee simple townhomes, some with front-loading garages and others with rear-loading garages, and 232 "two over two" or "stacked" townhome condominiums. The stacked townhomes include a variety of two bedroom units and three

bedroom units. The lower floors are normally the two bedroom units and the upper floors are the three bedroom units.

There is one major entrance to the development, located on the northeast corner of the property, and it has been designed so it can be easily expanded to serve the Clarksburg Bus Depot when that property develops. That was done intentionally to minimize the number of entrances on Shawnee Lane, maintain proper distances between the intersection with Gateway Drive and the future Observation Drive and connect with the Duffy property on the north side of Shawnee Lane, which is a proposed PD-11 property. The planned right-in, right-out entrance to the west side of the property is anticipated to be a temporary entrance until the surrounding properties are developed, and then interconnectivity can be achieved with those properties.

Mr. Ellison testified that, assuming that rezoning proceeds reasonably well, groundbreaking on this development is projected for very late 2005 or early 2006. He would not anticipate that any home construction would start on this project before mid to late 2006 at the earliest, and that would mean that the first homes would probably be occupied sometime in early 2007 at the earliest. Tr. 31. This is probably a three year, and possibly a four year, project in terms of the home construction. Thus, if the first home is delivered March 2007, the last ones probably will be delivered in March 2010, or perhaps even later in 2010. Each phase takes roughly a year.

According to Mr. Ellison, the new middle school opens this fall, and the contractor is on site constructing a new Clarksburg High School. Planning is underway on at least one of the proposed elementary schools for the Clarksburg area, the one located off of Clarksburg Road. Tr. 31. It is Mr. Ellison's understanding that the new Clarksburg High School and elementary school number 7 will come on line in the same school year that Applicant first starts delivering the units to purchasers or homebuyers, and it appears that elementary school number 8 will come on line about three years later. According to Mr. Ellison, Applicant will likely still be in the process of

delivering homes at that time. He therefore believes that there will be new school facilities on line at the same time Applicant is providing homes. Tr. 138.

In Mr. Ellison's opinion, the scale and the magnitude of his development, as well as the style of architecture, will work very well with surrounding development, and will be very compatible. With respect to future uses, Mr. Ellison stated that Applicant had created a design "that can be expanded both to the east and the west and will work out very well with the future uses on those properties." Tr. 33-34. The closest residences (three houses) are located to the east, along Shawnee Lane.

Mr. Ellison testified that, across 355, there are some relatively recent communities constructed, he believed, within the last five years. Applicant constructed one of them, called Running Brook. There is a project to the north that has not yet started construction by U.S. Homes. On the east side of 355 and south of Stringtown Road is a community that is under construction by Centex Homes. The Clarksburg Town Center is located to the north, and Clarksburg Village, the most recent large project that's been approved, is located to the northeast.

As to perpetual maintenance, Mr. Ellison testified that Applicant will use the same property management company that Applicant uses in all of its communities. Applicant establishes a yearly budget for the property management company and the homeowners association, which includes ongoing maintenance funds such as minor paving repairs, grass cutting, and the placement of landscape, and it also will include reserve funds for replacement of any physical feature that's worn out over time. According to Mr. Ellison, Applicant will take positive steps to ensure that, not only is the year-to-year and day-to-day maintenance being met, but long term replacement costs are provided for as well. Tr. 140-141.

Mr. Ellison testified that Applicant envisions "a layered association" for the subject development because the condominium units will have a different type of maintenance

requirement. The roof of a stacked townhome covers two units, whereas the roof of a fee simple townhome covers only one unit. All of the units will be members of the home owners association., but there probably will be a variable fee structure depending on the specific needs of an individual unit. Tr. 141-142.

2. Phil Perrine:

Phil Perrine testified as an expert in land planning and civil engineering. Mr. Perrine described the Transitway that is proposed to run along Observation Drive (*i.e.*, a north-south transit easement), near the eastern edge of the subject property. Tr. 43. It will be designed for busses or light rail, not private automobiles, and transit stations would be located, one about 1,500 feet north of the subject property and one about 2,000 feet south of the subject property. The proposed Transitway is currently being studied by the State, and it may be many years before the studies are completed. In the meantime, Mr. Perrine testified that the proposed development meets the current the adequate public facilities test without reliance on the Transitway.

By Mr. Perrine's measurement, it is about 1,000 feet from the proposed development to the nearest residential units, a couple of which are located along the areas to the north of Shawnee Lane. Tr. 50-51. There are Comsat facilities about 1,000 feet to the south of the subject site, and about 900 feet to the southeast is another proposed residential development.

The subject property is located within in the Transit District area, as designated by the Master Plan. The transit area is the west side of the Transit District area, which runs from MD121 south to Old Baltimore Road, and from Interstate 270 over to Route 355. The Transit District area is proposed for a density of 9 to 11 units per acre for some of the residential areas and 7 to 9 units per acre for others. The town center residential density is about 5 to 7 units per acre. According to Mr. Perrine, that difference in density is due to the planned location of a transit line in the

Transit District area. This Transit District will redevelop from what is now essentially an employment area, with the Comsat development and the development along Gateway Industrial Park, to an area of higher density residential, in a transit-oriented development style, with a residential and employment mix, as per the Master Plan. The planning challenge in the Transit District is to introduce housing into a predominantly employment area. The housing densities must be high enough to be supportive of transit. Tr. 49-54.

The Applicant will be improving Shawnee Lane from a two lane road to a four lane divided road and encouraging an interconnective street system, as you would typically find in older communities. Tr. 54.

Mr. Perrine testified that the Comsat site is being developed by the LCOR Company, to the west of the subject property. LCOR is planning a mix of residential and employment uses in a transit-oriented style development that would interconnect with the subject development. The MCPS bus depot to the east is zoned R-200, and recommended in the Master Plan for PD-9 to 11, similar to the subject property. According to Mr. Perrine, MCPS plans to move the bus depot, and “they are in the process of preparing a RFP for the property and for the new location.” The Moyer property is occupied by a moving company (just to the east of the bus depot), and the Master Plan proposes a density of 7 to 9 units per acre for it. The Clarksburg High School will be located southeast of the Moyer property. Towards the edge of the Transit District, to the south near Old Baltimore Road, where there are single family residences, and to the east through MD 355, the densities go back to accommodate and become compatible with the existing residences along those areas. Tr. 55-56.

Mr. Perrine described the subject property as being within the confluence of two streams. There is a stream pattern that flows southward along both sides of the property, and it continues down to the south below Old Baltimore Road. About a third of the property is within the stream

valley, which is largely forested, and the other two thirds, to the north, are being developed. The rear of the property is relatively gently sloping, but not in excess of 5 percent “so it's good developable land.” Tr. 56-57.

Mr. Perrine testified that the development plan proposes a variety of residential types, plus a mix of MPDU units and market price units. “It promotes residential interactivity by clustering these residences. It's got an extensive pedestrian network. There's a variety of larger and smaller open spaces, passive outdoor recreation area, green spaces, and a larger green space toward the center of the property [where] a gathering of community residents could occur.” Tr. 57. Mr. Perrine noted that the Technical Staff report had mentioned that other developments in the Transit District could provide a greater the variety of residential units.

Recreation facilities include smaller scale areas and larger scale facilities that are scaled to be used for open play. There are eleven picnic sitting areas and three tot lot areas, and there are larger open play areas that are in the central green area, which is about 90 feet wide. In Mr. Perrine's opinion, they are a significant commons, which has been described as a Savannah Green type of open space. Tr. 60. There is also an extensive sidewalk system that interconnects all these areas, and there are sidewalks also along the street frontages of these units. All that interconnects the residences to the open space and to Shawnee Lane where the transit is, so everything will be easily accessible both for recreation and transit. Whatever the final facility is, all will be easily accessible by walkways for pedestrians.

Presuming rezoning is approved, there will be a more detailed site plan prepared that would show exactly how the landscaping would occur in the tot lot and sitting areas, and it would be more detailed about how the storm water management facility would be transformed into a recreational amenity that has a pleasing view to it, and to take advantage of the open space. Tr. 62. The Technical Staff report, on page 13, concludes that the internal pedestrian circulation of walkways

provides for safe and adequate movement of pedestrian traffic throughout this development. Mr. Perrine agrees because the walkways are along, but separated from, the roadway system, and the system is efficient in that it allows residents to move to the immediate community recreation facilities, as well as to neighborhood-wide facilities and to the transit. Tr. 63.

Mr. Perrine characterized the development as a “spine growth system.” There are roads, and drives off of them that provide access to the actual residential units. In some cases, these have been stubbed to provide for future interconnection with adjacent development. Many of the residential drives end in *cul de sacs*. There is no major road running through the project. According to Mr. Perrine, all these steps have maximized the safety, convenience, and amenity to the residents. Tr. 65.

Mr. Perrine opined that Applicant had met the requirements of the purpose clause of the PD Zone. The Development Plan implements the Clarksburg Master Plan recommendation for appropriate density near transit and helps to create the shift from employment to a mixed use employment/residential basis that the Master Plan recommends. On page 55, the Master Plan recommends PD-9 to 11, and the Applicant is within the PD-11 density range. Tr. 67. The unit layout, street pattern, and the walkway system is conducive to pedestrian activity. The proximity of residences and the connection to the transit, recreation facilities, and among the residences within the project means that this community will be less auto-dependent.

The design also facilitates and encourages a maximum of social and community interaction among the people who live and work within this area and encourages the creation of a distinctive visual character identity. It is achieved through the use of both the pedestrian and vehicular interconnections and provides for a variety of larger and smaller open spaces; the smaller ones within sub-neighborhoods to give some identity to those areas, and the larger one to provide some identity to the entire project. Tr. 67-70. The combination of the smaller open

spaces and larger ones addresses the PD Zone's social interaction objective.

Pedestrian walkways connect residences to the open space, provide access to the transit, and provide for an efficient pedestrian system and a community that's conducive to walking. The development is large scale (290 units), and yet, the entire project is rather compact. Only 15 acres of the 23.8 acres of the property will be built up, thus creating a very walkable community.

In terms of the variety of development, there are different types of units (*i.e.*, front-loaded townhomes, rear-loaded townhomes, and two-over-two, four story units), some architectural variations and differing styles of ownership, from condominium to fee simple. This variety allows you to achieve a certain diversity in the community, based on age, income levels and various family requirements.

The flexibility that is provided by the PD Zone permits the retention of virtually the entire forested area that is located on this property. The entire stream valley buffer will be left undisturbed. Grading is minimized largely because of the existing drainage on the site, and the units being planned do not require the large parking areas needed for high-rise apartments, which are associated with a lot of clear grading. In other words, it is easier to grade the site sensitively when there are multiple smaller buildings, instead of a large building.

In Mr. Perrine's opinion, the proposed development also meets the specific standards of the PD-11 Zone. The Code requires a minimum of 20 percent townhouse or single family attached. The proposed development would provide the required 20 percent with 58 townhouse units. Mr. Perrine testified that the Zoning Ordinance accepts a four story, two-over-two townhome, as comparable to a four story multi-family type of unit, in terms of mix. Applicant meets the 35 percent minimum requirement by providing 80 percent of these units. High-rises are not permitted in the PD-11, and none is proposed. Tr. 70-72.

Given the acreage and the base density of a PD-11, Mr. Perrine testified that 262 units

would be the base density permitted (11 units per acre times 23.8 acres). Under Montgomery County Code §25-A, Applicant would be allowed to seek up to a maximum of 22 percent as a bonus density. Because of a number of factors (stream valley buffer, storm water management, the style of unit, the connectivity, recreation, and the available land that can be developed), Applicant has not sought the maximum density bonus of 22%, but rather proposes a 10.7% density bonus. 10.7 percent of 262 yields an extra 28 units. Thus Applicant is seeking to construct 262 base units plus 28 bonus units, or a total of 290 units. Under the sliding scale in Zoning Ordinance, §25-A, the MPDU requirement for a 10.7% density bonus is to provide 13.6 percent (*i.e.* 40) of the 290 units as MPDU's, which is what the applicant is proposing to do [13.6% of 290 = 39.44]. Technical Staff found that acceptable and approved it. Tr. 72-77. In Mr. Perrine's opinion, given the constraints on the property, Applicant has made the maximum possible usage of the MPDU regulations. MPDU's will be scattered throughout the site.

Mr. Perrine testified that Applicant planned fencing and some additional plantings as a buffer between the subject site and the bus depot, depending on when the depot is moved.

Mr. Perrine opined that the subject development is compatible with surrounding developments, both existing and planned, the latter being more important in his opinion because the Master Plan calls for extensive residential development of the nearby properties. Tr. 81-82. With regard to the CCAEC's concern about well water, Applicant produced a PWQP, which was reviewed by Technical Staff and approved conceptually. There has been no indication that there will be any adverse impact on the quality of well water. Tr. 83-84. Responding to CCAEC's desire for more "usable" green space, Mr. Perrine noted that Applicant was providing 58.5 percent green area versus the 50 percent requirement in the Zoning Ordinance, and in his opinion, even the space that is not actively utilized because it is part of the storm water management system, is utilized in a meaningful way as a visual amenity. Tr. 84-85. There are also larger

recreation facilities around the area, but in Mr. Perrine's opinion, the scale of recreation space provided on the subject property is appropriate for the style of community that is being proposed.

In terms of dedication of land, a prior owner of this property has dedicated a 70 foot right-of-way for Shawnee Lane, about 9.5 acres of land. Shawnee Lane is now Master Planned for a 120 foot right-of-way, so Applicant is providing an additional 25 feet of right-of-way, which means an additional .3411 acres is being dedicated to public use. Tr. 86.

With respect to parking facilities, 522 spaces are required based on the density of the proposed development, and 648 parking spaces will be provided, thus yielding about 2.23 spaces per unit. Tr. 88.

In Mr. Perrine's opinion, the proposed development does not conflict with the general plan, the county capital improvements program, or, other county plans, including the Master Plan, whether or not the Transitway is built. Tr. 88-89. Mr. Perrine noted that the current annual growth policy schools test finds that there is adequate capacity in the Clarksburg cluster. Specifically, there is a capacity of 779 elementary school-aged children in the cluster for Fiscal Year 2005. The middle school capacity is 161 students and the high school capacity is 651 students. These figures are based on the current annual growth policy schools test, which found capacity adequate in the Clarksburg [actually, Damascus] cluster. Tr. 89-90.

Mr. Perrine further testified that the design the project has minimized grading to prevent the erosion of the soil and preserve natural vegetation. "Virtually the entire forest stand on this property is being retained. There's a small portion that's lost due to the townhomes but by and large virtually the entire forest stand is retained. All of the forest stand within the stream valley buffer is being retained. There is no grading within that area." Tr. 98-99.

There are some draft HOA documents that have been submitted with the application showing ownership and the method of assuring perpetual maintenance of any areas that are used

for either recreation or common or quasi-public purposes. There are a set of condominium homeowner association, common area easements that will be identified during the subdivision stage. Tr. 99.

Exhibit No. 44 demonstrates that the interceptor capacity deficiency that is talked about in the Technical Staff report will be resolved by completion of the force main and Crystal Rock pumping station project in November of 2004. Tr. 103-104.

According to Mr. Perrine, fire and rescue services for this project are located at the Hyattstown Station No. 9 on Frederick Road, about four miles north of the property. The Hyattstown Station No. 29 located on Aircraft Drive in Germantown also serves this area. Tr. 103.

Mr. Perrine opined that transit system planned for in the Master Plan cannot be successfully implemented until there is a “higher density residential and a mix of residential and employment in this area. Without that residential base the transit way would not have sufficient ridership to be warranted or if it were implemented without the base would not succeed.” Tr. 104. He indicated that, in his experience as a land planner, it is normal that the transit development would follow some of the residential development. “[T]here's got to be enough development preceding the transit to warrant the transit being built and to get the right-of-way.” Tr. 107-108.

Mr. Perrine also noted Technical Staff's approval of the development plan, referencing Staff's conclusions that the proposed design and mix of the residential units appears to be appropriate and desirable for the subject site; that the proposed PD-11 development, with the design features and layout of the development as depicted on the development plan, is appropriate for the subject property; and that the development plan will be consistent with the purpose clause and all applicable standards of the PD-11 Zone and will be in accord with the land use recommendations of the Master Plan. Tr. 104-105. Once adjacent properties are developed, they will be interconnected with the subject site.

Mr. Perrine stated that forest conservation will be provided entirely on the property. There are no waivers being requested here, and all the stream valley buffer areas will be retained as wooded areas except for where the sewer outfall will be located. All the storm water management, both quantity and quality control, will be on site except for some upgrading being done on a pond to the north of the property. Tr. 106-107.

Despite Mr. Perrine's familiarity with the area around the subject site, he knew of no evidence that there is a health hazard from the bus depot. Tr. 109-110.

As to CCAEC's concern about excessive density from surrounding development, Mr. Perrine noted that the Master Plan contemplates redevelopment of the surrounding properties, and provides a summary of the ["maximum end-state development potential"] in the 990 acres of the Transit Corridor District. Master Plan at page 40. The Plan call for a total of 2,790 dwelling units, in addition to employment and retail space. On page 10 of the Technical Appendix to the Master Plan, there is a notation that all residential calculations in the Master Plan include a 22 per cent density increase to reflect MPDU Ordinance provisions. Tr. 110-113.

3. Craig Hedberg:

Craig Hedberg testified as an expert in traffic engineering. He stated that he did a Local Area Transportation Review (LATR) study for the subject development (Exhibit 34(m)), which involved analyzing four intersections that were identified by the Maryland-National Capital Park and Planning Transportation staff. These intersections were MD 121 and Gateway Center Drive, MD 355 and Stringtown Road, MD 355 and Shawnee Lane, and Shawnee Lane and Gateway Center Drive.

Mr. Hedberg testified that, under the existing traffic conditions, all intersections met the congestion standard for the area. At the time of filing (*i.e.*, prior to July 1, 2004), the congestion standard was 1,500. The 1,450 standard is currently in effect. Both were met. Tr. 118.

Further analysis required consideration of the fact that Stringtown Road is being upgraded, from the I-270 interchange through 355. Route 121 will no longer be part of the interchange ramp with I-270, but will be reoriented so that it intersects Stringtown Road, opposite Gateway Center Drive.

Mr. Hedberg testified that when he applied the background conditions (*i.e.*, present traffic plus anticipated traffic from developments in the pipeline) to the newly extended Stringtown Road (*i.e.*, at the intersection of Stringtown Road Extended and Gateway Center Drive) the anticipated critical lane volume was exceeded at this intersection. The other intersections still met the congestion standard. When he added traffic that is anticipated from the subject development to the background condition, “we had additional impact at that location as well.” The resulting congestion (1841 CLV during the PM peak hour) is shown in Table E on page 20 of his report.

Mr. Hedberg suggested some lane redesignations at the one problematic intersection to solve the congestion problem. These are shown on page 21 of his report. Table F on page 22 of the Hedberg report shows the reduction in projected CLV (1231 CLV during the PM peak hour) at the same intersection after the suggested lane redesignations, thus operating under the congestion standard. Tr. 120-121.

Mr. Hedberg further testified that by also agreeing to widen Shawnee Lane to four lanes from Gateway Center Drive to MD 355, Applicant satisfies the traffic test, whether or not there is a Policy Area Transportation Review (PATR). Tr. 122.

In Mr. Hedberg’s opinion, the layout of the subject site is safe, adequate and efficient, in terms of the vehicular entranceways, connecting roads that will not encourage cut-throughs and the sidewalk system, all consistent with County transportation policies. Tr. 123-124.

4. Gary Ehrlich:

Gary Ehrlich testified as an acoustical expert concerning the possible impact of the bus depot next to the proposed residential development. His noise analyses have been identified in the record as Exhibits 34(o) and (p).

Mr. Ehrlich testified that he performed sound measurements in May of this year, by setting up unattended meters for a week and comparing the results to the Maryland National Capital Park and Planning Commission day/night average sound level, which is 65 decibels during the day and 55 at night. Tr. 132 and 135. He found that the sound level never left the high 50's. Every single day at three different locations for a full week, from May 14th through May 20th, it was in the 50's. Thus, it was significantly below the Maryland National Capital Park and Planning Commission's criterion of 65. Tr. 132. The decibel scale is a logrhythmic scale, so that a typical person would take 55 decibels as half as loud as 65 decibels. Tr. 135.

From his study, Mr. Ehrlich concluded that there was no significant noise impact from the bus depot. He repeated the measurements in the Fall at the request of Applicant, but noise from the cicadas prevented valid readings at that time.

Mr. Ehrlich indicated that the M-NCPPC limit is 45 decibels indoors and 65 decibels outdoors. Normally, he focuses on the outdoor limit because a typical house can reduce noise levels by at least 20 decibels. Accordingly, if the noise level is less than 65 decibels outside, it will certainly be less than 45 inside. He also noted that, these days a typical house provides closer to a 25 decibel reduction. Therefore, you do not need "extra padding" in the residences near the bus depot in order to achieve the 45 decibels inside. Tr. 133. In Mr. Ehrlich's opinion, "the vast majority of people wouldn't be highly annoyed at these levels." Tr. 134.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Standards for Council Review

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, “in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification.” Therefore, these findings are an essential part of the Hearing Examiner’s Report and Recommendation.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

- (a) That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.
- (b) That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.
- (c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.
- (d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.
- (e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

In sum, there are six findings required (§59-D-1.61(a) through (e) and the public interest). The “Required Findings” in the next part of this Report and Recommendation are organized in the order set forth in the statute to facilitate review.

B. Required Findings

1. County Plans and Policies

The first required finding is:

That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.

a. The Applicable Master Plan or Sector Plan

The subject site is located within the area governed by the *Clarksburg Master Plan*, approved and adopted in June, 1994. The Master Plan’s recommendations for the subject site center around the Plan’s proposal for “a comprehensive transit system that will reduce

dependence on the automobile.” Master Plan, page 22. A significant part of this proposal is a north-south Transitway that “will serve the transportation needs of the residents and workers in the I-270 Corridor north of Shady Grove.” The subject property is within “Transit Corridor District” and has a recommended density of 9 to 11 dwelling units per acre, consistent with the PD-11 Zone sought in this case.

The proposed Eastside Development Plan will introduce a number of residential units into an existing employment area within walking distance of two proposed Transit Stops, which is a major goal for the development of this area as envisioned by the Master Plan. It also fulfills the Master Plan objective of improving east-west roadway connections through Binding Elements 2 and 8, which respectively call for Applicant to widen Shawnee Lane to arterial standards and to make any modifications necessary at the intersection of Stringtown Road and Gateway Center Drive to meet LATR requirements.

Finally, the Master Plan “[e]ndorses an extensive network of interconnected streets to provide local access within neighborhoods.” Master Plan at page 24. As noted by Technical Staff, the Development Plan provides such an interconnected street system through its multiple connections to adjacent properties and its planned pedestrian sidewalk network.

For all these reasons, as explained in greater detail in Part III.D.3. of this report, Applicant’s Development Plan is in substantial compliance with the Master Plan, as “Finding (a)” requires.

b. The General Plan and the County Capital Improvements Program

The General Plan “encourages housing plans that foster transit serviceability and proximity of affordable housing to transit.” General Plan Refinement, Approved and Adopted 1993, p. 53. This Application places 290 housing units close to two planned transit stops, thus satisfying the General Plan. Applicant’s land use expert, Phil Perrine, testified that this project would not conflict with the County’s Capital Improvements Program or other applicable County

plans and policies. Tr. 88-89. As is shown below, this testimony is supported by other evidence in this case, and the Hearing Examiner finds, based on all the evidence, that the proposed development is consistent with County policies.

c. Other County Policies (Annual Growth Policy and Adequate Public Facilities Ordinance)

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest

Under the 2003-05 AGP Policy Element (p.14), "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

1. Transportation

Local Area Transportation Review (LATR):

Under the 2003-05 AGP Policy Element, subdivision applications are subject to Local Area Transportation Review ("LATR") requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. Technical Staff identified four intersections

near the subject site as critical in determining whether Applicant will meet the applicable congestion standard for the Clarksburg Policy Area. Both Technical Staff and Applicant's traffic engineer applied the congestion standard in effect on the date of the application, which was May 5, 2004 (*i.e.*, 1,500 Critical Lane Volume (CLV) in the Clarksburg area). The congestion standard in effect since July 1, 2004 for the Clarksburg area is 1,450 CLV. This distinction does not make a difference in this case because all intersections will meet both standards following roadway modifications to which Applicant has committed in Binding Element 8. As explained more fully in Part III.D.4.a. of this report, Applicant's proposal complies with the LATR standards.

Policy Area Transportation Review (PATR):⁶

Applying the FY 2004 Annual Growth Policy staging ceiling capacity, Technical Staff determined that there was insufficient capacity available for the housing development proposed by Applicant. As of May 31, 2004, there was a negative staging capacity of -5,028 housing units in the Clarksburg Policy Area. The Applicant proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) in order to provide sufficient capacity, and Technical Staff determined that the proposed roadway improvements would provide sufficient staging ceiling capacity to accommodate the proposed development. Applicant's commitment to this improvement is contained in Binding Element 2.

Thus, both the LATR and the PATR standards have been satisfied.

2. School Capacity:

As discussed in Part III.D.4.b. of this report, school capacity is a significant concern in this case because of the size of the proposed development. The subject property is located within the

⁶ As mentioned above, this Application was filed prior to July 1, 2004, and therefore Technical Staff applied the standards of the FY 2004 AGP, including the PATR which was then in effect. When the Hearing Examiner raised the question of whether the PATR should be applied at all, given its elimination in the current FY 2003-05 Policy Element of the new AGP, Applicant's counsel opined that it should be applied. Tr. 48-49. Given Applicant's commitment to a binding element to widen Shawnee Lane to satisfy the PATR, this issue is now a moot point.

Clarksburg/Damascus Cluster, and it is estimated that the Eastside Development of 290 dwelling units will generate 81 elementary, 27 middle and 31 high school students (Exhibit 34(q)).

The subject site is served by Clarksburg Elementary School, Rocky Hill Middle School and Damascus High School. Clarksburg Elementary School is projected to remain over capacity for the six year forecast period. Two new elementary schools are scheduled to open, one for the 2006-07 school year (Clarksburg/Damascus Elementary School #7) and the other for the 2009-10 school year (Clarksburg/Damascus Elementary School #8). The opening of these schools is intended to address projected space shortages at Clarksburg Elementary School.

Rocky Hill Middle School is projected to exceed capacity beginning in 2008-2009 school year. The 1994 Master Plan identifies a site for a future middle school located in the Greenway Village Subdivision; however, the school is not yet scheduled for construction. At the high school level, Damascus High School is projected to remain over capacity for the six year forecast period. A new high school, the Clarksburg Area High School, is scheduled to open for the 2006-07 school year. The new school is expected to relieve projected space shortages at Damascus High School.

The current Annual Growth Policy (AGP) schools test finds the school capacity adequate in the Clarksburg Cluster. *See*, the Planning Board's letter to the Council finding capacity "adequate" in each cluster for FY 2005 (Exhibit 34(r)).

Applicant's vice-president, Charles Ellison, testified that, given the school construction schedule and the staging of the subject development, it appeared that there will be new school facilities on line at the same time Applicant is providing homes. Tr. 138. At the Hearing Examiner's request (Tr. 6), Applicant produced a chart (Exhibit 52(c)) showing how the timing for construction of new schools will match up with the schedule of construction and occupation of the Eastside project. It is shown below:

G-824		EASTSIDE - School Construction vs. Home Construction			
	Sept. 04	Sept. 05	Sept. 06	Sept. 07	Sept. 08
Eastside Home Construction			54 Total Homes Occupied	206 Total Homes Occupied	290 Total Homes Occupied
Clarksburg H.S.	Under Construction		Opens 9/2006		
Rocky Hill M.S.	Opened				
Baker M.S.	6 Classroom Addition	Opens 9/2005			
Clarksburg E.S. #7		Under Construction	Opens 9/2006		
Clarksburg E.S. #8				Under Construction	Opens 9/2008

Based on the testimony, the timing shown in this chart, and the fact that the current Annual Growth Policy (AGP) schools test finds the school capacity adequate in the Clarksburg Cluster, the Hearing Examiner concludes that MCPS will be able to handle the increased demand projected from the subject development.

3. Water and Sewer Service:

Under the FY 2003-05 AGP Policy Element, p.14, “applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III).”

Technical Staff reports that public water and sewer serve the general Shawnee Road area. Water category is W-1, and the project site is eligible for sewer service. It is located in Sewer Service Area ‘A’ originally identified for service in Stages 2 and 3 of the Staging Plan. Funding for sewer service was provided in the FY 96 Capital Improvements Program, according to Technical Staff.

Although the Technical Staff report noted that “[i]nterceptor capacity for the proposed project is found to be deficient,” by the end of November 2004, WSSC will have completed the

Crystal Rock Wastewater Pumping Station and associated Force Main, according to Beth Forbes, a WSSC Development Project Manager (Exhibit 44). Once the Wastewater Pumping Station is placed into service, there will no longer be an interceptor capacity deficiency. Tr. 102-103.

In sum, based on this record, the Hearing Examiner finds that the requested rezoning does not conflict with “other applicable County plans and policies.”

2. Zone Requirements, Safety, Convenience and Amenity of Residents and Compatibility with Adjacent Development

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

a. Compliance with Zone Purposes, Standards and Regulations

The requirements for the PD-11 Zone are found in Code §59-C-7.1. The PD-11 Zone is a “floating zone,” which is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings.

These specifications must be spelled out on a development plan, however, to assure appropriate zoning oversight by the District Council. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones.

i. Purposes of the PD-11 Zone

The purpose clause for the PD-11 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. It is set forth in full below, with relevant analysis and conclusions following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the

community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

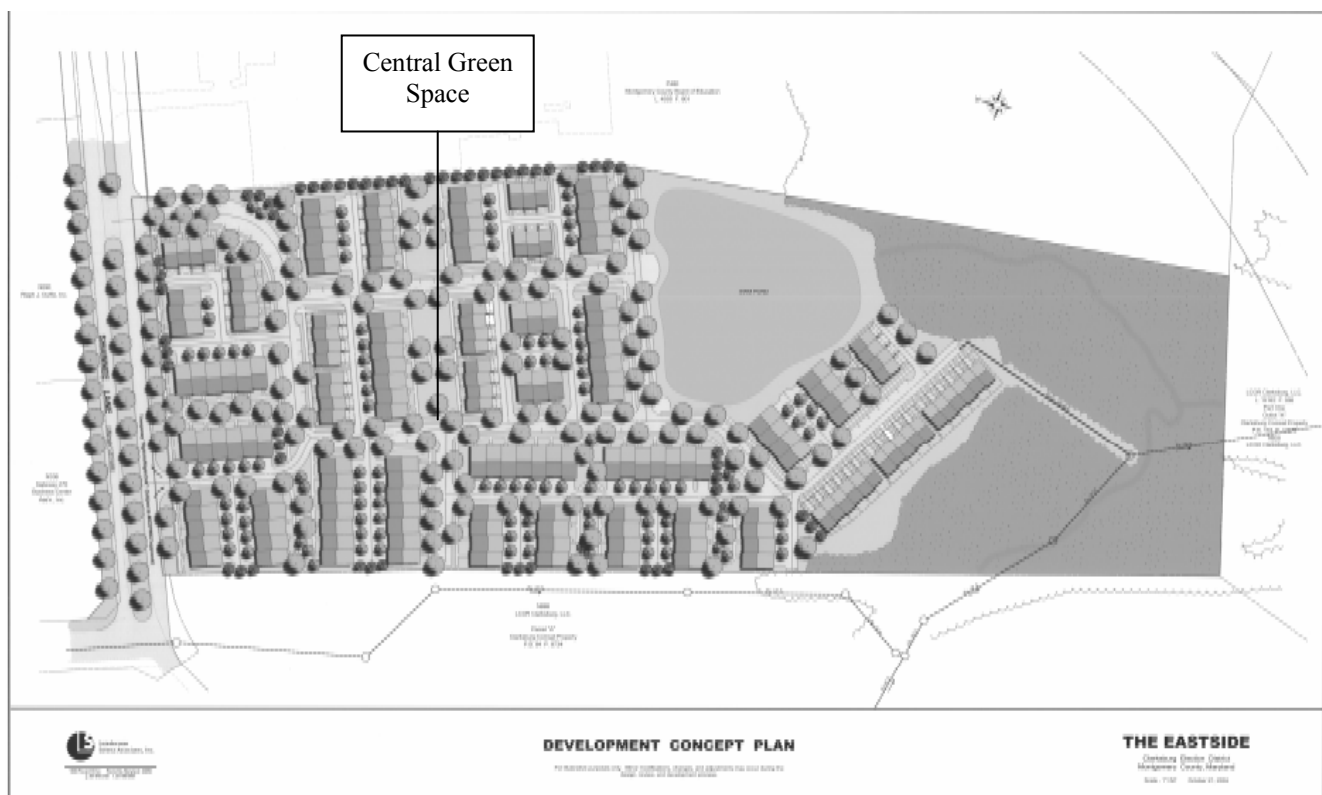
It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

As discussed in Parts III.D.3 and V.B.1.a., above, the proposed development will be in substantial compliance with the 1994 Clarksburg Master Plan. Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives.

Social and community interaction is facilitated and encouraged by the site layout, which provides a large green area in the center of the development and numerous pocket parks throughout. It is also well networked with streets and sidewalks to encourage residents to meet

their neighbors while walking. Applicant's vice-president, Charles Ellison, likened the center green area to the City of Savannah where they have "very interesting courtyards throughout the city." Tr. 23. He envisions streets connecting various courtyards to the central courtyard in the development, thus forming "a large green corridor that will be very attractive." In addition, there will be small interior courtyards which will be a little bit more private in nature. His concept is depicted in Applicant's illustrative site plan (Exhibit 50):



Applicant strives for "unit connectivity of pedestrian and vehicles, access ways between properties, and within the property." Tr. 19. Alley ways and garages are used to keep parked cars off the major streets. Community open space is integrated with the plan and is usually spread throughout the residences instead of just having the one large parkland. Applicant's land use expert, Phil Perrine, testified that the development "promotes residential interactivity" by the way the residences are clustered. "It's got an extensive pedestrian network. There's a variety of larger and smaller open spaces, passive outdoor recreation area, green spaces, and a larger green space

toward the center of the property [where] a gathering of community residents could occur.” Tr.

57. The development is also quite compact, thereby creating a very “walkable” community.

According to Mr. Ellison, Technical Staff encouraged him to have a road fronting on the storm water management basins, as a promenade along this natural feature, thus creating a walking environment and making the storm water management basins “an active part of the recreational and green space for the public.”

Two basic types of housing are planned: 58 three story, fee simple townhomes, some with front-loading garages and others with rear-loading garages, and 232 “two over two” or “stacked” townhome condominiums. The stacked townhomes include a variety of two bedroom units and three bedroom units. The lower floors are normally the two bedroom units and the upper floors are the three bedroom units. There will also be 40 MPDU’s scattered throughout the development. Thus there is some variety in both housing types and kinds of ownership.

Technical Staff notes that while the range of housing types within the project might not be quite as broad as the Zone recommends, “given the property’s location next to a proposed large mixed-use development (the LCOR’s site) and other potential development sites in the immediate vicinity,⁷ it is very likely that a balance of a wider range of unit types will be maintained to satisfy the intended purpose of the Zone within the immediate neighborhood (Transit Corridor District).”

⁷ The Master Plan recommends the area immediately surrounding the Property to be developed as a mixed-use center. The dominant residential type recommended is multi-family (30%-50%) and single-family attached (40% to 60%) with only 5% to 10% of the residences recommended as single-family detached (Master Plan, page 39). Recommended development for the surrounding area is well described in Applicant’s Pre-Hearing Statement (Exhibit 34(a)), which is paraphrased herein. To the west is the LCOR/Comsat site. The Clarksburg Master Plan recommends that it be developed with up to 2.3 million square feet of employment or with up to 4 million square feet of transit oriented development. (Clarksburg Master Plan, pages 56-57). To the south is wooded and open vacant land zoned I 3 and R 200/TDR 2/4 near Newcut Road Extended. The Master Plan recommends R&D, Institutional and 2 to 4 units per acre (Master Plan, page 55). To the east is the Board of Education’s 20 acre school bus depot, in which the Master Plan recommends a residential community of compatible density, style and character as the subject development. To the north, across Shawnee Lane from the Property is vacant land. It is comprised of recorded but undeveloped ½ acre lots, and parcels of 3 to 20 acres with scattered residences in proximity to MD Route 355. The area immediately north of the Property is recommended for residential density of 9 to 11 units per acre, and the area further north and east is recommended for 2 to 4 units per acre. (Master Plan page 55).

The Hearing Examiner agrees. The subject development will provide some variety, which will be amply supplemented by recommended development in the surrounding area, thus achieving the kind of mix recommended by the Purpose Clause.

Another purpose of the Zone is to preserve and take advantage of trees and to minimize grading. Applicant's plan achieves this goal. The southern portion of the property contains approximately six acres of reforestation and preservation area, with varying topography and vegetation. This area also provides a natural barrier from potential visual and noise intrusion. Mr. Ellison testified that the development plan works very well with the natural features and topography on the site, a gentle 5% slope, and thus there will be no need for massive grading. Mr. Perrine testified that the design of the project has minimized grading to prevent the erosion of the soil and preserve natural vegetation. "Virtually the entire forest stand on this property is being retained. There's a small portion that's lost due to the townhomes but by and large virtually the entire forest stand is retained. All of the forest stand within the stream valley buffer is being retained. There is no grading within that area." Tr. 98-99.

The Purpose Clause also calls for use of open space, "not only for use as setbacks and yards," but also "for the general benefit of the community and public at large." Once again, Applicant has met this objective. Technical Staff notes that the units are oriented in such a manner that the residents would be able to enjoy views into green areas throughout the site, including the stream valley and around the stormwater management basins. Stormwater management basins, in addition to their normal function, are thus utilized as part of the amenity package for the planned community, by creating four small cells separated by berms which will have walking paths and some type of nature exhibits, such as flowering shrubs.

Mr. Ellison notes that the project not only meets the 50 % green space requirement by having 58 % green space, but also the green space locations are “carefully thought out throughout the community so it is accessible by virtually all of the future residents.” Tr. 24. Recreation facilities include smaller scale areas and larger scale facilities that are scaled to be used for open play. There are eleven picnic sitting areas and three tot lot areas, as well as larger open play areas in the central “Savannah” open space, which is about 90 feet wide. Tr. 60.

The linkages recommended in the Purpose Clause are provided by an extensive sidewalk system that interconnects all the open space areas. There are sidewalks also along the street frontages of the housing units, all of which interconnect the residences to the open space and to Shawnee Lane, where the transit is, so everything will be easily accessible for both recreation and transit. Testimony of Phil Perrine, Tr. 61-62.

Typically, developments in the PD Zone are, as mentioned in the Purpose Clause, large in scale, a characteristic which enables the developer to employ the kinds of pedestrian circulation networks, open spaces and recreational areas which are goals of the Zone. Such is the case here. The proposed site plan shows 290 units (232 stacked townhome condominiums and 58 single-family attached units) on the 23.82 acres of land with a density of 11 dwelling units per acre.

Finally, the Purpose Clause calls for a maximum of safety, convenience and amenity for both local and adjacent residents, as well as compatibility with existing and proposed surrounding land uses. Convenience and amenities were discussed above, although it should be added that, with a total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), adequate parking accommodation is provided for residents and visitors. As to safety, Technical Staff concluded that “the proposed access to the site as shown on the development plan [is] safe and adequate . . . [and] that the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic.” The Clarksburg Civic Association Executive Committee

(CCAEC), raised a health concern regarding the adjacent bus depot, but there is no evidence in this record that the nearby bus depot will be a health hazard to residents of the subject development. Tr. 109-110. There is evidence from an expert acoustical engineer that it will not pose a health hazard in terms of noise (Tr. 132-137), and hearsay testimony indicating that fumes have not been a problem on the side of the bus depot where the subject site is located. Tr. 14-15. There is also evidence in the record that the bus depot property is in the process of being relocated. Tr. 13-14, 55-56. Thus, the Hearing Examiner has no basis for finding that the bus depot would pose any health danger to anyone.

With regard to compatibility with neighboring properties, Technical Staff stated its opinion that “the proposed development is designed in a manner that is compatible with and will complement existing and future developments in the immediate area. Through a combination of architectural, topographical and landscaping features, the proposed development represents retention of sensitive environmental features, a balanced site design and adequate green space, which at the same time create an aesthetically pleasing environment on the subject property. Given the fact that a large portion of the property is within the stream valley and not developable, the proposed design and mix of the residential units appear to be appropriate and desirable for the subject site.” Staff also noted that the development plan “provides coordinated vehicular and pedestrian connections to future developments on adjacent properties.”

In addition, Mr. Ellison testified that the scale and the magnitude of his development, as well as the style of architecture, will work very well with surrounding development, and will be very compatible. With respect to future uses, Mr. Ellison noted that Applicant had created a design “that can be expanded both to the east and the west and will work out very well with the future uses on those properties.” Tr. 33-34

In sum, the proposed development is consistent with the intent and purposes of the PD-11 Zone. We next look to the “standards and regulations” of the PD-11 Zone.

ii. Standards and Regulations of the PD-11 Zone

The standards and regulations of the PD-11 Zone are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the *1994 Clarksburg Master Plan*, recommends that the subject property be developed under the PD-9 or the PD-11 Zone, which permits up to 11 dwelling units per acre. Accordingly, this provision would be satisfied in this case.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criteria (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” As noted above, the subject property is recommended for the PD-11 Zone by the Master Plan, and contains 23.82 acres. Thus, the base density permitted = $11 \times 23.82 = 262$ dwelling units. This figure clearly exceeds the 50 dwelling unit minimum under this requirement. Moreover, the development will actually have a total of 290 units because it is allowed a 28 unit bonus based on its inclusion of 40 MPDU’s. *See*, Part III.D.2.(page 18) of this report regarding the calculation of the bonus units and MPDU’s.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-11 Zone except those over four stories tall. All the dwelling units proposed by Applicant are four stories, or less, and all are therefore permitted. However, the statute also requires a minimum percentage of townhome-and-attached units (20%) and four-story-or-less, multi-family units (35%). Since 290 units are proposed, 20% of that number would require 58 townhome-and-attached units, which is the number provided for in the Development Plan. The remainder, 80%, will be four-story-or-less, multi-family units, clearly exceeding the 35% minimum for that type of unit.

Section 59-C-7.132 and 7.133, Commercial and Other Uses Permitted

There are no non-residential uses proposed here.

Section 59-C-7.14, Density of Residential Development

The Master Plan recommends the PD-11 Zone, which is medium-density category permitting a maximum of 11 dwelling units per acre. As noted above, the base density permitted for the acreage in question is 262 units. However, Code §59-C-7.14(c) permits a bonus density if there is a minimum of 12.5% MPDU's. The subject Development Plan calls for 13.6% MPDU's and a bonus density of 28 units (10.7%). The Hearing Examiner finds that Applicant's calculation is consistent with the statutory requirements.

Section 59-C-7.15, Compatibility

The Technical Staff opines that the proposed development will be compatible with other uses existing or proposed in the vicinity of the planned development, and the Hearing Examiner agrees for the reasons set forth above in the discussion of the Zone's Purpose Clause.

Section 59-C-7.16, Green Area

This section of the Ordinance requires 50% green space for the PD-11 Zone. The Development Plan shows 58.5% (13.94 acres) of the subject property in green area, thus exceeding the 50% minimum required under the PD-11 density category.

Section 59-C-7.17, Dedication of Land for Public Use

The Development Plan calls for dedication of approximately 0.3411 acres in a 25 foot wide right-of-way on Shawnee Lane. There was a prior dedication of 0.9518 acres to the Shawnee Lane right-of-way.

Section 59-C-7.18, Parking Facilities

Off-street parking will be provided in accordance with Zoning Code §59-E-3.7, which requires 2 parking spaces for each single-family townhome, 1.5 spaces for each multi-family dwelling unit with 2 bedrooms and 2 spaces for each multi-family dwelling unit with 3 bedrooms. General Note 16 on the Development Plan correctly calculates the number of parking spaces required as follows:

2 spaces X 58 single-family townhomes	= 116 spaces
1.5 spaces X 116 two-bedroom multiple family units	= 174 spaces
2 spaces X 116 three-bedroom multiple family units	= 232 spaces

	522 spaces required

The Development Plan calls for a total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), and it therefore exceeds the statutory requirement.

In sum, the Hearing Examiner agrees with Technical Staff's conclusion that "the proposed Zoning Map Amendment and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-11 Zone as set forth in the Zoning Ordinance."

b. Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-11 Zone, it has been discussed in that context in this report. The Hearing Examiner finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

c. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-11 Zone, the Hearing Examiner concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

3. Internal Vehicular and Pedestrian Circulation Systems and Site Access

The third required finding is:

That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

The proposed development will have two access points from Shawnee Lane, one full access and one right-in/right-out only. The full access point is to be located on the eastern edge of the property. It is proposed as a three-lane driveway, one entering and two exiting the site. This access will be reconstructed in the future to have four lanes, two egress and two ingress lanes, when the adjoining school property is developed. The new driveway will be shared between this

development and the adjoining development. The safety and adequacy of the access and circulation systems were discussed above in connection with the PD-11 Zone's Purpose Clause. As mentioned there, Technical Staff concluded that "the proposed access to the site as shown on the development plan [is] safe and adequate . . . [and] that the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic."

Accordingly, the Hearing Examiner finds that the proposed circulation systems and site access would be safe, adequate and efficient.

4. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources

The fourth required finding is:

That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

Because the subject property is located within the Little Seneca Creek Watershed of the Clarksburg Special Protection Area, it received strict environmental scrutiny by the Planning Board and the Department of Permitting Services (DPS). Its Preliminary Water Quality Plan (PWQP) was approved by both agencies (Exhibits 55(a) and 37).

Applicant also submitted an approved Natural Resources Inventory and Forest Stand Delineation (Exhibit 34(h)), a revised Concept Grading Plan (Exhibit 36(b)), a revised Concept Water and Sanitary Sewer Plan (Exhibit 36(d)), and a revised Concept Forest Conservation Plan (CFCP-Exhibit 36(e)). The related environmental issues are discussed at some length in Part III.D.5. of this report. As noted there, Technical Staff reported no environmental issues warranting denial of this application. Moreover, as mentioned in the discussion of the Purpose

Clause, above, the project design has minimized grading to prevent the erosion of the soil and preserve natural vegetation. In the words of land use expert, Phil Perrine, “Virtually the entire forest stand on this property is being retained. . . .”

In sum, the Hearing Examiner finds that Applicant has demonstrated the environmental controls required by “Finding (d).”

5. Ownership and Perpetual Maintenance

The fifth required finding is:

That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

Applicant’s vice-president, Charles Ellison, testified that Applicant is the contract purchaser of the subject property from owner LCOR at Clarksburg, LLC. Tr. 15. As to perpetual maintenance, Mr. Ellison testified that Applicant will use the same property management company that Applicant uses in all of its Communities. Applicant establishes a yearly budget for the property management company and the homeowners association, which includes ongoing maintenance funds such as minor paving repairs, grass cutting, and the placement of landscaping, and it also will include reserve funds for replacement of any physical feature that is worn out over time. According to Mr. Ellison, Applicant will take positive steps to ensure that, not only is the year-to-year and day-to-day maintenance being met, but also long term replacement costs are provided for as well. Tr. 140-141. Draft Homeowners Association Documents and Condominium Documents have also been filed (Exhibits 17 and 18).

The Hearing Examiner finds that Applicant has sufficiently demonstrated both contract ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

6. The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest. The proposed development will promote the “health, safety, morals, comfort, and welfare of the inhabitants of the regional district” (*i.e.*, the public interest) by providing the kind of residential development called for in the *1994 Clarksburg Master Plan*, without any adverse effect on public facilities, as shown in Parts III.D.4.c. and V.B.1.c, above. It will bring residents within walking distance of planned transit stops and local employment options, consistent with the Master Plan. In sum, the proposed rezoning is in the public interest.

C. Conclusion

As demonstrated in Part V.B., all of the findings required by statute for the requested rezoning are appropriate in this case. The Technical Staff and the Planning Board both found that Applicant had satisfied the Master Plan and the zoning requirements. Based on the foregoing analysis, and after a thorough review of the entire record, the Hearing Examiner agrees and further concludes that application of the PD-11 Zone at the proposed location would be proper for the comprehensive and systematic development of the County.

VI. RECOMMENDATION

I therefore recommend that Zoning Application No. G-824, requesting reclassification from the R-200 Zone to the PD-11 Zone, of a 23.8211-acre parcel of unimproved land, known as “Eastside” (Part of Liber 15162, Folio 596) including Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg, be approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 53(d), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three

copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

Dated: December 13, 2004

Respectfully submitted,

Martin L. Grossman
Hearing Examiner